

TAFT, STETTINIUS & HOLLISTER

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March 31, 1992

2-091A045

17760
RECORDATION NO. FILED 1025

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

MAR 31 1992 2:22 PM

INTERSTATE COMMERCE COMMISSION

Dear Secretary:

Enclosed is the original and one certified copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Loan and Security Agreement, a primary document dated March 31, 1992.

The names and addresses of the parties to this Loan and Security Agreement are as follows:

Debtor:

Compass Rail Corporation
555 California Street
Suite 2810
San Francisco, California 94104
Attn: President

Lender:

The Provident Bank
One East Fourth Street
Cincinnati, Ohio 45202
Attn: Vice President Forest C. Frank

Trustee:

State Street Bank and Trust Company
c/o State Street Bank and Trust Company of
Connecticut, N.A.
750 Main Street
Hartford, Connecticut 06103
Attn: Corporate Trust Department

MAR 31 2 25 PM '92
MOTOR OPERATING UNIT

C. D. [Signature]

Secretary
March 31, 1992
Page 2

A description of the equipment covered by the document is set forth in Schedule A attached to this letter and made a part hereof.

The fee of \$16.00 is enclosed. Please return the original of this document to the person presenting this letter and its attachments for filing.

A short summary of the Loan and Security Agreement to be appear in the index is as follows:

Loan and Security Agreement between Compass Rail Corporation, Debtor (address: 555 California Street, Suite 2810, San Francisco, California 94104) and The Provident Bank, Lender (address: One East Fourth Street, Cincinnati, Ohio 45202) and State Street Bank and Trust Company, Trustee (address: 750 Main Street, Hartford, Connecticut 06103) covering 1,962 open top triple hopper railroad cars, dated March 31, 1992.

Sincerely yours,

TAFT, STETTINIUS & HOLLISTER

By 
G. David Schiering

GDS:ro50240

Enclosures

cc: Michael H. Brown, Esq.
David M. Elkort, Esq.

SCHEDULE A

SCHEDULE 1.1 (c)
TO
LOAN AND SECURITY AGREEMENT

Equipment

CR487301 to CR487354
CR487366 to CR487407
CR487409 to CR487452
CR487455 to CR487471
CR487473 to CR487600
CR487610 to CR487634
CR487636 to CR487643
CR487645 to CR487672
CR487674 to CR487731
CR487733 to CR487757
CR487759 to CR487824

* * * *

CR488155 to CR488168
CR488170 to CR488180
CR488182 to CR488185
CR488218
CR488251 to CR488254
CR488260
CR488264 to CR488269
CR488272 to CR488284
CR488296 to CR488347
CR488349 to CR488353
CR488355 to CR488435
CR488437 to CR488463
CR490801 to CR490804
CR490806 to CR490835
CR490837 to CR490875

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CR488464 to CR488501
CR488504 to CR488517
CR488519 to CR488531
CR488533 to CR488554
CR488556 to CR488606
CR488609 to CR488655
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CR488762 to CR488853
CR488855 to CR488938
CR488940 to CR488941
CR488943 to CR488952
CR488954 to CR4889020
CR4889022
CR4889024 to CR4889193
CR4889195 to CR4889256
CR4889258 to CR4889332
CR4889334 to CR4889347
CR4889349 to CR4889423
CR4889425 to CR4889490
CR4889492 to CR4889541
CR4889543 to CR4889641

3/31/92

Interstate Commerce Commission
Washington, D.C. 20423

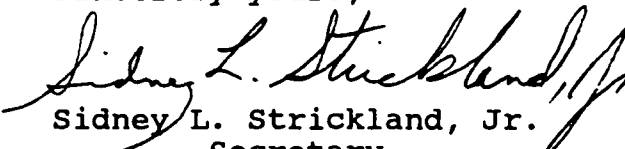
OFFICE OF THE SECRETARY

G. David Schiering
Taft Stettinius & Hollister
625 Indiana Ave. N.W.
Washington, D.C. 20004-2901

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/31/92 at 2:30pm, and assigned recordation number(s). 17760

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

• 17760
RECORDED NO. _____ FILED 1425
MAR 31 1992 -2 30 PM
INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

By and Among

THE PROVIDENT BANK, Lender

**STATE STREET BANK AND TRUST COMPANY
Owner Trustee**

AND

COMPASS RAIL CORPORATION, Owner Participant

March 31, 1992

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated March 31, 1992 by and among THE PROVIDENT BANK, an Ohio banking corporation with its principal place of business at One East Fourth Street, Cincinnati, Ohio 45202 (the "Lender"), STATE STREET BANK AND TRUST COMPANY (successor to The Connecticut Bank and Trust Company), a Massachusetts corporation with its principal place of business at 225 Franklin Street, Boston, Massachusetts 02101, in its individual capacity as expressly stated herein, and otherwise not in its individual capacity but solely as trustee under those three certain trust agreements dated as of March 15, 1978 ("Owner Trustee") and COMPASS RAIL CORPORATION, a California corporation with its principal place of business at 555 California Street, Suite 2810, San Francisco, California 94104 ("Owner Participant").

W I T N E S S E T H:

ARTICLE 1

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.1 Defined Terms.

As used in this Loan and Security Agreement, unless the context otherwise requires, the following terms shall have the following meanings (such meaning to be equally applicable to both the singular and plural forms of terms):

(a) "Act" means the Securities Act of 1933, as the same may be amended from time to time.

(b) "Agreement" means this Loan and Security Agreement, including all Schedules, Exhibits, and Supplements hereto, if any, as the same may from time to time be amended, supplemented or otherwise modified.

(c) "Assigned Rights" means all of Owner Participant's right, title and interest in the Purchase Agreements which relate in any manner whatsoever to the Trust Estates, Leases and Equipment, including, without limitation, such rights relating to general representations, warranties, covenants and provisions in the Purchase Agreements and the ability to exercise such rights, but excluding any obligations thereunder.

(d) "Assignment Agreement" means the Assignment Agreement, substantially in the form of Exhibit 1.1(d), between Owner Participant and Lender, pursuant to which Owner Participant assigns all of the Assigned Rights to Lender as security.

(e) "Beneficial Interests" means all of the ownership and rights to the beneficial interests in and to the Trust Estates under the Trust Agreements, which are held by Owner Participant.

(f) "Business Day" means any day except a Saturday, Sunday or a day on which banking institutions in Cincinnati, Ohio or San Francisco, California, shall be authorized or obligated by law, executive order or governmental decree to be closed.

(g) "Casualty Loss" means any event which constitutes a Casualty Occurrence as defined in each Lease with respect to any Unit.

(h) "Casualty Value" means, with respect to each Unit and at any time, the Casualty Value as calculated pursuant to the Lease covering such Unit plus the Insurance Amount with respect to such Unit.

(i) "Chattel Paper" means any "chattel paper" as such term is defined in Section 9-105(1)(b) of the UCC, now owned or hereafter acquired by Owner Trustee.

(j) "Closing Date" has the meaning attributed thereto in Section 7.1 hereof.

(k) "Collateral" has the meaning attributed thereto in Section 3.2 hereof.

(l) "Contingent Payment" means, with respect to Units which are sold by Owner Trustee, or the beneficial interest in which is sold by Owner Participant, to a third party other than pursuant to an Option Agreement, an amount equal to Fifty Percent (50%) of the sales proceeds of such Units after deduction of reasonable out of pocket remarketing and other expenses of such sale in excess of the balance of the Loan Allocation to which such Units relate plus all accrued but unpaid interest on such Loan Allocation.

(m) "Default" means any of the events specified in Section 6.1 hereof, whether or not there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or the happening of any further condition, event or act.

(n) "Default Interest Rate" means the interest rate per annum equal to Twelve and One-Half Percent (12.5%).

(o) "Equipment" means any and all of the railroad equipment subject to the Leases as set forth on Schedule 1.1(o) hereto.

(p) "Event of Default" means any of the events specified in Section 6.1 hereof, provided that there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or the happening of any further condition, event or act.

(q) "GAAP" means generally accepted accounting principles in the United States, applied on a consistent basis, as in effect from time to time.

(r) "Guaranty" means the guaranty given by Owner Participant set forth in Section 8.1 and secured by an assignment by Owner Participant of the Assigned Rights and the pledge of the Beneficial Interests and the Option Interests.

(s) "ICC" means the Interstate Commerce Commission.

(t) "Indebtedness" means, as to any Person, all items of indebtedness, obligation or liability, whether matured or unmatured, liquidated or unliquidated, direct or contingent, joint or several, including without limitation:

(i) all indebtedness guaranteed, directly or indirectly, in any manner or endorsed (other than for collection or deposit in the ordinary course of business) or discounted with recourse;

(ii) all indebtedness in effect guaranteed, directly or indirectly, through agreements, contingent or otherwise:

(A) to purchase such indebtedness; or

(B) to purchase, sell or lease (as lessee or lessor) property, products, materials or supplies or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the owner of the indebtedness against loss; or

(C) to supply funds to or in any other manner invest in the debtor;

(iii) all indebtedness secured by (or for which the holder of such indebtedness has a right, contingent or otherwise, to be secured by) any mortgage, deed of trust, pledge, lien,

security interest or other charge or encumbrance upon property owned or acquired subject thereto, whether or not the liabilities secured thereby have been assumed; and

- (iv) all indebtedness incurred as the lessee of goods or services under leases that in accordance with GAAP, should not be reflected on the lessee's balance sheet.

(u) "Insurance Amount" means property insurance obtained by Owner Participant on each of the Units in the amounts set forth on Schedule 1.1(u) subject to an overall aggregate limitation of \$5,000,000.

(v) "Late Charges" means, with respect to any Lease, any and all prepayment charges, interest, late charges, and all other amounts and obligations due and owing under such Lease as a result of any late payment.

(w) "Lease Documents" means all of the documents or instruments relating to the Equipment and the Leases, including but not limited to all leases, guaranties, promissory notes and other agreements but not including the Purchase Agreements or the Trust Agreements.

(x) "Lease Payments" means any and all payments due on or after the Closing Date of whatsoever kind or nature pursuant or relating to any of the Leases (except any such payments payable to Owner Trustee in its individual capacity).

(y) "Leases" means the leases including schedules related thereto which leases constitute a portion of the Trust Estates, are assigned hereunder to Lender by Owner Trustee as security for the Loan and are described on Schedule 1.1(y) hereto; and "Lease" means any of the Leases.

(z) "Lender" means The Provident Bank in its capacity as the Lender under this Agreement, and each assignee of The Provident Bank (in the same capacity) pursuant to Section 9.6 hereof.

(aa) "Lessee" means Consolidated Rail Corporation, a Pennsylvania corporation.

(ab) "Lien" means any mortgage, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any lease having substantially the same economic effect as a conditional sale or title retention agreement, and the filing of, or agreement to

give, any financing statement under the UCC or comparable law of any jurisdiction).

(ac) "Loan" means the loan made or to be made by the Lender to Owner Trustee under Section 2.1 of this Agreement.

(ad) "Loan Account" means the amount of the Loan associated with each Lease with a beginning principal balance equal to the total of the Scheduled Payments due on or after the Closing Date for such Lease discounted to the Closing Date at a discount rate of 9.5% per annum, compounded semiannually.

(ae) "Loan Allocation" means, for the sole purpose of performing certain calculations set forth herein, the allocation of the original principal amount of the Loan among the Leases as set forth on Schedule 1.1(ae) hereto.

(af) "Loan Amount" has the meaning attributed thereto in Section 2.1 hereof.

(ag) "Loan Documents" means the agreements, documents, certificates and instruments delivered or to be delivered from time to time pursuant to the terms of this Agreement or in connection with the Loan, including without limitation, this Agreement, the Note, the Assignment Agreement and the Pledge Agreement.

(ah) "Note" means the promissory note made by Owner Trustee to the order of the Lender, executed pursuant hereto in substantially the form of Exhibit 1.1(ah) hereto, and any promissory note made by Owner Trustee in exchange or substitution for the Note.

(ai) "Obligations" means, collectively, all of the indebtedness, obligations, liabilities and reimbursement obligations existing on the date hereof or arising from time to time hereafter, whether direct, indirect, absolute, contingent, joint or several, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, of Owner Trustee to the Lender (i) in respect of the Loan made pursuant to this Agreement, (ii) under or in respect of any one or more of the Loan Documents, or (iii) under or in respect of any other obligations of Owner Trustee to Lender. Obligations shall also include all interest and other charges chargeable hereunder to Owner Trustee or due hereunder from Owner Trustee to Lender from time to time and all costs and expenses referred to in Section 9.2 herein.

(aj) "Obligor" on a Lease means the lessee(s) of the Equipment or any other Person who owes payments under such Lease. The phrase "payment made on behalf of an Obligor" shall mean all payments made with respect to a Lease.

(ak) "Option Agreements" means, collectively, the three Equipment Option Agreements dated as of December 29, 1988 between Lessee and each of Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation and Sixth HFC Leasing Corporation; and "Option Agreement" means any of the Option Agreements.

(al) "Option Interests" means all of Owner Participant's right, title and interest in the Option Agreements including, without limitation, such rights relating to general representations, warranties, covenants and provisions in the Option Agreements and the ability to exercise such rights, but excluding any obligations thereunder.

(am) "Permitted Lien" means:

- (i) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business that are not yet due and payable;
- (ii) Liens in favor of the Lender;
- (iii) Liens in favor of Owner Trustee arising under the Trust Agreements to secure payment of amounts due Owner Trustee thereunder; and
- (iv) Liens created by any lessee or created by or permitted under the Lease Documents.

(an) "Person" means any individual, corporation, partnership, joint venture, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

(ao) "Pledge Agreement" means the Pledge Agreement between Owner Participant and Lender dated as of March 11, 1992, granting Lender a first priority security interest in all of the Beneficial Interests and the Option Interests, but excluding any obligations thereunder.

(ap) "Prepayment Amount" means, with respect to any Unit, the Casualty Value of such Unit at the time of a Casualty Loss.

(aq) "Property" means all types of real, personal, tangible, intangible or mixed property.

(ar) "Purchase Agreements" means, collectively, the three Purchase Agreements of even date herewith between Owner Participant and each of Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation and Sixth HFC Leasing Corporation providing for the purchase of the Beneficial Interests and the Option Interests, all exhibits and schedules thereto and the related instruments of

transfer and assignment; and "Purchase Agreement" means any of the Purchase Agreements.

(as) "Scheduled Payment" means, with respect to any Lease, the payment of basic rent, required to be made by the Lessee during each rental period during the primary term of such Lease.

(at) "Security" means the Assigned Rights, the Beneficial Interests, the Option Interests and the Collateral.

(au) "Standby Option Agreement" means the Standby Option Agreement of even date herewith pursuant to which Owner Participant has granted to the Lender an option to purchase all or a portion of the Beneficial Interests.

(av) "Trusts" means the trusts created under the Trust Agreements; and "Trust" means any of the Trusts.

(aw) "Trust Agreements" means, collectively, the three trust agreements by and between Owner Trustee, in its individual capacity, and Owner Participant as assignee of Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation and Sixth HFC Leasing Corporation, dated as of March 15, 1978, including all amendments thereof through the date hereof and as the same may be amended, modified or supplemented from time to time in accordance with the provisions thereof and this Agreement; and "Trust Agreement" means any of the Trust Agreements.

(ax) "Trust Amendments" means, collectively, the amendments to each of the Trust Agreements of even date herewith; and "Trust Amendment" means any of the Trust Amendments.

(ay) "Trust Estates" means, collectively, the Trust Estates as defined in Section 1.02 of each Trust Agreement; and "Trust Estate" means any of the Trust Estates.

(az) "UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of Ohio; provided, however, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of Lender's security interest in any of the Security is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Ohio, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection, or priority and for purposes of definitions related to such provisions.

(ba) "Unit" means any 100-ton open top triple hopper car constituting a portion of the Equipment.

SECTION 1.2 Accounting Terms.

All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

SECTION 1.3 Use of Defined Terms.

All terms defined in this Agreement shall have their defined meanings when used in the Note and the other Loan Documents, unless the context otherwise indicates or requires. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreements.

ARTICLE 2

LOAN TERMS AND AMOUNT

SECTION 2.1 Commitment.

Subject to the terms and conditions of this Agreement, the Lender agrees to make a loan to Owner Trustee on the Closing Date in an amount up to Twenty Two Million Six Hundred Thousand and 00/100 Dollars (\$22,600,000), (the "Loan Amount").

SECTION 2.2 Use of Proceeds.

Owner Participant shall use the proceeds of the Loan solely to fund the purchase of the Beneficial Interests and the Option Interests pursuant to the Purchase Agreements and related expenses of Owner Participant.

SECTION 2.3 Note; Interest Rate.

The Loan shall be evidenced by the Note of Owner Trustee in substantially the form of Exhibit 1.1(ah) hereto.

The Note shall be in the principal sum of up to Twenty-Two Million Six Hundred Thousand and 00/100 Dollars (\$22,600,000) or so much thereof as is loaned by Lender pursuant to the provisions of the Note and the terms and provisions of this Agreement. The Note shall bear interest at the annual rate equal to Nine and One-Half Percent (9.5%) per annum.

If any payment of principal or interest under the Note is not paid when due, at the option of the Lender and as permitted by applicable law, the Note shall bear interest from the date when due at the Default Interest Rate, except (a) during such time as Late Charges are accruing, interest on the related delinquent amount shall be equal to such Late Charges and no Event of Default under any of the Leases shall have been declared and (b) after maturity

of the Note but before the expiration of the extended term of the Leases set forth in Section 14 of each Lease and before the declaration of an Event of default under any of the Leases, the Default Interest Rate shall not apply during any time that the rent payable under the Leases exceeds the interest accruing under the Note.

Notwithstanding anything to the contrary in the Loan Documents, neither the Note nor the Loan shall ever bear interest at a rate per annum greater than the maximum rate permitted by applicable law as the same exists from day to day during the term hereof (the "Maximum Rate"). If at any time the interest on the Note or the Loan shall exceed the Maximum Rate, thereby causing the interest on the Note and the Loan to be limited to the Maximum Rate, then any subsequent reduction in the rate of interest on the Note or the Loan shall not reduce the rate of interest on the Note or the Loan below the Maximum Rate until the aggregate amount of interest accrued on the Note and the Loan equals the aggregate amount of interest which would have accrued on the Note and the Loan if the interest provided for hereunder had at all times been in effect.

SECTION 2.4 Payments of Interest and Principal.

Commencing immediately, principal and interest accrued on the unpaid principal amount of the Note shall be due and payable in installments as set forth on Schedule 1 to the Note and on the date the Loan is due (whether by maturity, acceleration or otherwise); provided that, in any event the last installment payable on the Note shall be in an amount sufficient to pay in full the entire unpaid principal amount of the Note, together with all accrued but unpaid interest thereon. All of the Obligations evidenced by the Note shall, if not sooner due and payable as provided in this Agreement, be in any event absolutely and unconditionally due and payable in full by Owner Trustee on January 2, 1994.

Owner Trustee hereby irrevocably directs the Lender to apply all of the Lease Payments realized by Owner Trustee under a Lease pursuant to Section 2.7 hereof. All payments applied to principal on any Loan Account shall reduce the outstanding principal balance of the Note. Owner Trustee shall irrevocably direct all Lease Payments to be made to Lender at One East Fourth Street, Cincinnati, Ohio 45202 so long as any Obligations remain outstanding.

SECTION 2.5 Prepayment.

In the event of a Casualty Loss of any Unit, Owner Trustee shall pay to the Lender the Prepayment Amount with respect to such Unit, plus any related Late Charges. Such prepayment shall be made on the interest payment date immediately following such casualty

loss and shall be applied (a) first to the Loan Account to which such Unit relates in an amount equal to the present value of future Scheduled Payments theretofore applicable to such Unit discounted to the prepayment date at the rate of 9.5% per annum, compounded semi-annually and (b) second to the balance of the Loan Allocation to which such Unit relates. Upon any such prepayment, future installments due under the Note prior to maturity shall be reduced by an amount equal to the portion of the Scheduled Payment theretofore applicable to such Unit.

SECTION 2.6 Manner of Payments; Computation of Interest.

Interest on the Note shall be calculated on the basis of a three hundred sixty (360) day year composed of twelve (12) months each having thirty (30) days.

All payments (including prepayments) by Owner Trustee on account of principal of and interest on the Note shall be made to the Lender at One East Fourth Street, Cincinnati, Ohio 45202 or at such other place as the Lender shall notify Owner Trustee in writing, in lawful money of the United States of America and in immediately available funds.

If any payment to be made under the Note becomes due on a day that is not a Business Day, such payment shall be made on the immediately preceding Business Day.

SECTION 2.7 Application of Funds.

Notwithstanding anything herein to the contrary, all funds received by Lender, shall be applied or distributed as hereinafter provided in this Section 2.7.

(a) Loan Account Payments.

(i) If No Event of Default. If no Event of Default has occurred and is continuing, all Lease Payments with respect to a particular Loan Account ("Loan Account Payments") shall be applied or distributed as follows:

- (A) To the payment of all interest due and payable on the principal of such Loan Account at the time of such payment;
- (B) To the payment of principal due and payable on such Loan Account at the time of such payment;
- (C) To the payment of all costs and expenses relating to such Loan Account;

(D) To a third party, or to Owner Trustee or Owner Participant as a reimbursement of amounts paid to a third party, for the purpose paid by Lessee as a Lease Payment; and

(E) Remaining balance, if any, to the related Loan Allocation, in inverse order of maturity.

(ii) If an Event of Default. If an Event of Default has occurred and is continuing, all Loan Account Payments shall be applied or distributed as follows:

(A) To the payment of all interest due and payable on the outstanding principal of the Loan;

(B) To the payment of principal due and payable on the Loan;

(C) To the payment of all costs and expenses of Lender pursuant to this Agreement or any other Loan Document and all other Obligations, due and owing to Lender pursuant to this Agreement or any other Loan Document;

(D) Remaining balance, if any, shall be distributed to Owner Trustee.

(b) Other Payments. Payments received by the Lender which are not described in Section 2.7(a) shall be applied by the Lender to the Loan Allocation related to such payment, in inverse order of maturity, and if none, to the Loan, in inverse order of maturity.

(c) Unrelated Payments. Notwithstanding anything herein to the contrary, all Lease Payments due before the Closing Date and arising out of the Leases and all other funds received by Lender not arising out of or related in any manner whatsoever to the Leases, the Equipment, the Collateral, the Assigned Rights, the Beneficial Interests or the Option Interests shall be paid to Owner Trustee with notice thereof to Owner Participant.

SECTION 2.8 Contingent Payment.

Owner Trustee shall make additional payments to the Lender in amounts equal to the Contingent Payments as additional return to the Lender. Each Contingent Payment shall be paid to the Lender on the date on which any transaction giving rise to a Contingent Payment takes place.

SECTION 2.9 Exchange of Note.

At the written request of the holder of the Note and upon surrender of the original Note for such purposes, Owner Trustee shall, at any time and at its expense (other than any transfer taxes) issue new Notes in exchange for such Note in denominations not smaller than \$1,000,000 specified by such holder, in an aggregate principal amount equal to the unpaid principal amount of the Note so surrendered and substantially in the form of Exhibit 1.1(ah) with appropriate insertions and variations, and bearing interest from the date to which interest has been paid on the Note so surrendered; provided, however, that Owner Trustee's obligation to issue new Notes pursuant to this Section 2.9 shall be subject to delivery to Owner Trustee by the holder of the Note of a representation substantially similar to that contained in Section 4.3(b) hereof, as the same may be modified to apply to any permitted transferee.

ARTICLE 3

COLLATERAL FOR THE LOAN

SECTION 3.1 Assignment of Assigned Rights, Pledge of Beneficial Interests and Option Interest and Grant of Security Interest.

(a) Assignment of Assigned Rights. As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration, or otherwise) of all of the Obligations of Owner Trustee, including, without limitation, with respect to the Loan, and the Loan Documents relating thereto, to induce Lender to make the Loan, to secure the performance and observance by Owner Trustee of all of its agreements and conditions applicable to it contained herein or in any other Loan Documents and to secure the performance by Owner Participant of its obligations under the Guaranty, Owner Participant shall assign, convey, pledge and transfer to Lender and hereby grant to Lender a continuing security interest and Lien in and to all of Owner Participant's right, title and interest in and to the Assigned Rights. Owner Participant shall evidence the assignment of the Assigned Rights to Lender by executing and delivering to Lender the Assignment Agreement.

(b) Pledge of Beneficial Interests and Option Interests. As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration, or otherwise) of all the Obligations of Owner Trustee, including, without limitation, with respect to the Loan, and the Loan Documents relating thereto, to induce Lender to make the Loan, to secure the performance and observance by Owner Trustee of all of its agreements and conditions applicable to it contained herein or

in any other Loan Documents and to secure the performance by Owner Participant of its obligations under the Guaranty, Owner Participant shall assign, convey, pledge and transfer to Lender and hereby grant to Lender a continuing security interest and Lien in and to all of Owner Participant's right, title and interest in and to the Beneficial Interests and the Option Interests. Owner Participant shall evidence its pledge of the Beneficial Interests and the Option Interests by executing and delivering to Lender the Pledge Agreement.

SECTION 3.2 Grant of Security Interests.

As collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration, or otherwise) of all the Obligations, including, without limitation, with respect to the Loan, and the Loan Documents relating thereto, and to induce the Lender to make the Loan, and to secure the performance and observance by Owner Trustee of all of its agreements and conditions applicable to it contained herein or in any other Loan Documents, Owner Trustee hereby grants, bargains, assigns, warrants, conveys, mortgages, pledges, hypothecates and transfers to the Lender a first priority, continuing security interest and Lien in, with power of sale, to Lender and to its successors and assigns forever, the following, whether now owned or hereafter acquired (the "Collateral"):

(a) the Leases and all extensions or renewals thereof, including without limitation, the full amount of each payment of rent payable pursuant to each Lease, the full amount of each payment pursuant to the indemnification provisions in each Lease, if any, and all other amounts payable by such lessees pursuant to the terms and conditions of each Lease and all rights, claims, powers, privileges and remedies thereunder (except any such payments payable to the Owner Trustee in its individual capacity);

(b) all rights, claims, powers, privileges and remedies of Owner Trustee as a result of the failure by the Lessee to perform or comply with any term of any Lease, together with full power and authority in the name of Owner Trustee to enforce, collect, receive and receipt for any and all of the foregoing;

(c) the Equipment, together with all accessories, fixtures, software, manuals, components, parts, attachments and appurtenances appertaining or attached to any of the Equipment, whether now owned or hereafter acquired, and all additions, substitutions, renewals and replacements of, and improvements to, any and all of the Equipment, wherever located, together with all the rents, proceeds, issues, income, profits and avails thereof including proceeds of insurance policies with respect thereto;

(d) all monies, deposits and other Property of any kind of Owner Trustee relating to the Collateral, whether or not in the possession or under the control of the Lender or a bailee of Lender and Lender's successors and assigns;

(e) all accessions to, substitutions for and replacements, products and proceeds of any of the foregoing.

SECTION 3.3 Obligations of Owner Trustee.

The assignment and grant of the security interest made by Owner Trustee hereunder is only as security and, therefor, shall not subject the Lender to, or transfer, or pass, or in any way affect or modify, the liability of Owner Trustee under the Leases or the other Loan Documents, it being agreed that, notwithstanding this Agreement, all obligations of Owner Trustee to the Obligors under the Leases or otherwise shall be and remain enforceable against, and only against, Owner Trustee or other Persons (as defined herein) other than the Lender. Owner Trustee shall appear in and defend every action in connection with such obligations at its sole cost.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

SECTION 4.1 Representations and Warranties of Owner Trustee.

In order to induce the Lender to enter into this Agreement and to make the Loan, Owner Trustee makes the following representations and warranties to the Lender, in its individual capacity, except as otherwise expressly provided herein:

(a) Legal Existence. Owner Trustee is a national banking association duly organized and validly existing in good standing under the laws of the United States of America, and has the corporate power and authority to enter into, deliver and perform its obligations under the Trust Agreements and (assuming due authorization, execution and delivery of the Trust Agreements by Owner Participant) has the corporate power and authority as Owner Trustee to enter into and perform its obligations under this Agreement, the Note, the Trust Agreements and the other Loan Documents to which Owner Trustee is a party.

(b) Power and Authority. Owner Trustee, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreements by Owner Participant) as Owner Trustee, as the case may be, has the corporate power and authority necessary to authorize the execution and delivery by it of the Loan Documents to which it is a party and the Trust Amendments, and

(assuming due authorization, execution and delivery of the Trust Agreements by Owner Participant) each such Loan Document has been or will be executed and delivered by one of its officers who is duly authorized to execute such Loan Document on its behalf.

(c) No Approval or Consent. The execution, delivery and performance of this Agreement, the Note, the Trust Amendments and the other Loan Documents to which Owner Trustee is a party do not require the approval of stockholders of Owner Trustee in its individual capacity or approval or consent of any trustee or holders of any indebtedness or obligations of Owner Trustee, in its individual capacity. Neither the execution and delivery thereof by it, either in its individual capacity or (assuming due authorization, execution and delivery of the Trust Agreements by Owner Participant) as Owner Trustee, nor the consummation by Owner Trustee in such capacities of the transactions contemplated thereby, nor compliance by Owner Trustee in such capacities with any of the terms and provisions thereof will contravene any federal or Massachusetts state law governing the banking or trust powers of Owner Trustee in its individual capacity or of any such governmental rule or regulation or of any order or judgment applicable to or binding on Owner Trustee in its individual capacity or any of its subsidiaries or contravene or result in any breach of or constitute any default under, or result in the creation of any Lien upon any property of Owner Trustee in its individual capacity under, any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement, corporate charter, by-law or other agreement or instrument to which Owner Trustee in its individual capacity or any of its subsidiaries is a party or by which Owner Trustee in its individual capacity or any of its subsidiaries or their respective properties may be bound.

(d) Execution, Binding Effect. Assuming due authorization, execution and delivery of the Trust Amendments by Owner Participant, this Agreement, the Note, the Trust Agreements and the other Loan Documents to which Owner Trustee is a party and the Trust Agreements constitute, or when entered into will constitute, legal, valid, and binding obligations of Owner Trustee in its individual capacity and as trustee, in each case as specified therein, enforceable against Owner Trustee in such respective capacities in accordance with the terms hereof and thereof, it being understood that Owner Trustee is not making any representation in its individual capacity as to the priorities of the Liens created thereunder, title to the Collateral or recordings or filings necessary in connection therewith.

(e) Qualification. Owner Trustee is in good standing under the laws of Massachusetts and has not received written notice from any jurisdiction to the effect that the conduct of its business or the ownership of its assets requires foreign qualification and in

which the failure to so qualify would have a materially adverse effect on the Trust Estates or Owner Trustee's ability to perform under this Agreement.

(f) Transaction Authority and Proceedings. The execution, delivery and performance by Owner Trustee of this Agreement, the Note, the Trust Amendments and the other Loan Documents have been duly authorized by all necessary corporate action of Owner Trustee, and do not and will not require any consent or approval of any other party except Owner Participant who has expressly consented thereto.

(g) No Legal Bar. The execution, delivery and performance by Owner Trustee of this Agreement and the Note do not and will not (i) violate any provision of any law, rule, regulation (including, without limitation, Regulation G, T, U or X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award having applicability to Owner Trustee, in its individual capacity; nor (ii) result in a breach of or constitute a default under any existing indebtedness, mortgage, indenture, loan or credit agreement, or any other agreement, lease or instrument to which Owner Trustee, in its trust capacity, is a party or by which Owner Trustee or its properties, each in its trust capacity, may be bound or affected; nor (iii) result in the creation or imposition of any Lien on any of the Collateral unrelated to the transactions contemplated hereby except as contemplated by this Agreement and the other Loan Documents.

(h) Litigation. There are no actions, suits, investigations, claims or proceedings (whether or not purportedly on behalf of Owner Trustee) pending or, to its knowledge, threatened against or affecting Owner Trustee, either in its individual or trust capacity before any court, arbitrator, administrative agency or governmental body which, or any actions or proceedings before any federal or state court, arbitrator, administrative agency or governmental body which relates to the banking or trust powers of Owner Trustee in either such capacity which if determined adversely to Owner Trustee, in either capacity, would have a material adverse effect on the financial condition, business or operations of Owner Trustee or the ability of Owner Trustee, in either capacity, to perform its Obligations under this Agreement, the Note, the Trust Agreements and the other Loan Documents to which Owner Trustee is a party in either such capacity.

(i) Default. Owner Trustee is not in default and no condition exists which, with the passing of time, and/or the giving of notice would constitute a default or an event of default under any existing indebtedness, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or other instrument to which Owner Trustee is a party or by which Owner

Trustee is subject or bound which would have a materially adverse effect on the Trust Estates or Owner Trustee's ability to perform under this Agreement.

(j) Government Consents, Registration, Etc. Assuming due authorization, execution and delivery of the Trust Agreements by Owner Participant, no authorization, consent, approval, license, exemption, filing, qualification, registration with, or the taking of any other action in respect of, any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary in connection with the execution, delivery or performance by Owner Trustee, either in its individual or trust capacity, of this Agreement, the Note, the Trust Amendments, the other Loan Documents or the transactions contemplated hereby or thereby except for any UCC filings and filings with the ICC contemplated by this Agreement. Neither Owner Trustee nor any Person controlling Owner Trustee or under common control with Owner Trustee is subject to regulation under the Public Utility Holding Company Act of 1940, the Interstate Commerce Act, or is subject to any statute or regulation which regulates the incurring by Owner Trustee of indebtedness for borrowed money.

(k) Principal Office. The principal place of business, the chief executive office and the place at which the books and records of Owner Trustee from and after the Closing are kept shall be 225 Franklin Street, Boston, Massachusetts 02101.

(l) Private Offering. Owner Trustee has not, either directly or indirectly, offered the Note or any similar security of Owner Trustee to, or solicited offers to acquire from, or otherwise approached or negotiated with respect thereto with, any Person other than Lender. Neither Owner Trustee nor anyone authorized to act on its behalf shall offer the Note or any part thereof or any similar securities for issue or sale to, or solicit any offer to acquire any of the same from, anyone so thereby as to bring the issuance of the Note within the provisions of Section 5 of the Act.

(m) Schedules to Purchase Agreements. In its trust capacity, Owner Trustee represents and warrants that the Schedules to the Purchase Agreements, copies of which have been furnished to Lender, are complete and correct and fully and fairly present the information contained therein.

(n) Compliance With Law. In its trust capacity that Owner Trustee has complied with all applicable laws, ordinances, governmental rules or regulations with respect to:

- (i) any restrictions, specifications, or other requirements pertaining to the trust services that Owner Trustee performs;

- (ii) the conduct of its trust business; and
- (iii) the use, maintenance and operation of the real and personal properties owned or leased by it, in its trust capacity, in the conduct of its business.

(o) Investment Company. Owner Trustee, in its individual capacity, is not an investment company within the meaning of the Investment Company Act of 1940, as amended, or, to the best of Owner Trustee's knowledge, is it, directly or indirectly, controlled by or acting on behalf of any person which is an investment company within the meaning of the act.

(p) Assets of Owner Trustee. The assets of the Trust Estates consist only of: (i) the interest of Owner Trustee in the Lease Documents, (ii) the interest of Owner Trustee in the Equipment, (iii) the books and records of Owner Trustee relating to the Trust Estates, (iv) the accounts receivable of Owner Trustee relating to the Trust Estates, (v) the contract rights of Owner Trustee relating to the Trust Estates, and (vi) all other property owned by Owner Trustee relating to the Trust Estates, including without limitation, all Lease Payments, insurance proceeds, requisition, indemnity or other payments of any kind.

(q) Material Agreements. Except as described on Schedule 4.1(q), Owner Trustee, in its trust capacity, is not a party to any contract or agreement, whether oral or written, other than any such contract or agreement constituting part of the Lease Documents.

(r) Title to Properties; Absence of Liens and Encumbrances, Etc. In its trust capacity that:

(i) Owner Trustee, in its trust capacity, has good and valid title to the Leases and Equipment, free and clear of all Liens, security interests and encumbrances, except for Permitted Liens.

(ii) Owner Trustee has not entered into any contract or agreement, oral or written, in the nature of a residual sharing agreement with any person or entity with respect to any Equipment.

(iii) None of the Equipment is subject to a purchase option in favor of any person or entity other than such purchase options as may have been granted under the Lease Documents in favor of the respective lessee thereunder, and the Option Agreements.

(s) Equipment. Owner Trustee, in its trust capacity, represents and warrants (i) that Exhibits A to the Purchase

Agreements set forth equipment descriptions which accurately describe the Equipment in all material respects. Owner Trustee, in its trust capacity, further represents and warrants that upon the filing of the UCC-1 financing statements contemplated by Section 7.2(1) of this Agreement and the filing of this Agreement with the ICC, Lender shall have a valid first priority security interest in all of the Equipment.

(t) Leases. In its trust capacity, Owner Trustee represents and warrants the following:

(i) Exhibits F to the Purchase Agreements identify all of the Leases. No Lease Documents have been modified, amended or canceled except as evidenced in the Lease Documents. There are no material agreements, written or oral, between Owner Trustee or Owner Participant (to the knowledge of Owner Trustee) and Lessee other than the Lease Documents, the Option Agreements or other documentation specifically provided to Lender relating to the leasing or financing of the Equipment. Neither Owner Trustee nor Owner Participant is required to perform any maintenance services in connection with the Leases, Lease Documents or Equipment.

(ii) Owner Trustee is not in default under or in violation of any material obligations to be performed by it pursuant to the Lease Documents nor does any condition exist which, upon the giving of notice or the lapse of time, or both, would constitute such a default by Owner Trustee.

(iii) To Owner Trustee's knowledge no default or event of default (as such terms may be defined in each respective Lease Document) nor any event which, upon giving of notice or the lapse of time, or both, would constitute a default or event of default has occurred and is continuing under the Lease Documents. To the best of Owner Trustee's knowledge the Lessee is fulfilling its obligations to maintain insurance pursuant to the Leases.

(iv) To the best of Owner Trustee's knowledge and except as otherwise disclosed in writing to the Lender, no event which constitutes a Casualty Loss or any event which, upon the giving of notice or the lapse of time or both, would constitute a Casualty Loss has occurred with respect to any of the Units.

(v) To the best of Owner Trustee's knowledge there are no claims to indemnify any person under any indemnification provisions of the Lease Documents outstanding against Owner Trustee or any other Person.

(vi) Schedule 1 of the Note sets forth a true and complete summary of the remaining Scheduled Payments due under each Lease as of the Closing Date.

(vii) The Lease Documents constitute valid agreements enforceable in accordance with their respective terms. The Lease Documents constitute agreements in full force and effect and none of the Lease Documents have been modified, amended or canceled except as evidenced in the Lease Documents.

(viii) At or prior to the Closing Date, Owner Trustee shall deliver, or cause to be delivered to Lender at the address designated for notice in Section 9.5 originals or copies of all the Lease Documents in its possession. The Lease Documents delivered to Lender at or prior to the Closing will constitute either true and complete originals or true and complete copies of such Lease Documents.

(ix) Neither Owner Trustee nor Owner Participant is in default under or in violation of any obligations to be performed by it pursuant to the Lease Documents nor does any condition exist which, upon the giving of notice or the lapse of time, or both, would constitute such a default by Owner Trustee.

(x) Lender shall have pursuant to this Agreement a valid first priority security interest in all of the Leases and Equipment.

SECTION 4.2 Representations and Warranties of Owner Participant.

In order to induce the Lender to enter into this Agreement and to make the Loan, Owner Participant makes the following representations and warranties to the Lender:

(a) Corporate Existence. Owner Participant is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

(b) Power and Authority. Owner Participant has full power, authority and legal right, government permits, consents and licenses, and other authorizations which are necessary to own its properties and to transact the business in which it is engaged or intends to engage.

(c) Qualification. Owner Participant is duly qualified as a foreign corporation and in good standing under the laws of each jurisdiction in which the conduct of its business or the ownership of its assets requires such qualification.

(d) Capitalization of Owner Participant.

(A) The authorized capital stock of Owner Participant consists solely of 1,000 shares of common stock, no par value, and only 1,000 shares are issued and outstanding. Such shares are validly issued, fully paid and nonassessable, were not issued in violation of the terms of any agreement or other understanding binding upon Owner Participant, and were issued in compliance with all applicable federal and state securities or "Blue Sky" laws and regulations.

(B) There are (i) no subscriptions, options, warrants, calls, preemptive rights, acquisition rights or any other rights or claims of any character or convertible securities which restrict the transfer of, require the issuance of, or otherwise relate to or are convertible into or exchangeable for the capital stock of Owner Participant, and (ii) no other commitments, agreements or understandings relating to the securities of Owner Participant which have not been performed in all material aspects.

(e) Transaction Authority. Owner Participant has all requisite power, authority and legal right to execute, deliver and perform all of its obligations under this Agreement, the Trust Agreements, the Pledge Agreement, the Assignment Agreement, the Standby Option Agreement and the other Loan Documents to which it is a party, and the execution, delivery and performance by Owner Participant of this Agreement, the Pledge Agreement, Trust Agreements, the Assignment Agreement, the Standby Option Agreement and the other Loan Documents to which it is a party, have been duly authorized by all necessary action, and do not and will not require any consent or approval of any other party (including the stockholders of Owner Participant) except as set forth on Schedule 4.2(e).

(f) No Legal Bar. The execution, delivery and performance by Owner Participant of this Agreement, the Pledge Agreement, the Trust Agreements, the Assignment Agreement, the Standby Option Agreement and the other Loan Documents to which it is a party, do not and will not (i) violate any provision of any law, rule, regulation (including, without limitation, Regulations G, T, U or X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award having applicability to Owner Participant, or the certificate of incorporation, charter, bylaws or any preferred stock provision of Owner Participant; nor (ii) result in a breach of or constitute a default under any existing indebtedness, mortgage, indenture, loan or credit agreement, or any other agreement, lease or instrument to which Owner Participant is a party or by which Owner Participant or its properties may be bound or affected.

(g) Employee Benefit Plans.

(i) Owner Participant has not and does not sponsor or maintain, nor is it required either by law or by contract to contribute to, any employee welfare benefit plan, within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or to any employee pension benefit plan, within the meaning of Section 3(2) of ERISA, including any multiemployer plan, within the meaning of Section 3(37) of ERISA (any such welfare benefit plan or employee pension benefit plan, a "Plan") or any other employee pension benefit plan, deferred compensation plan, medical benefit plan or other benefit plan;

(ii) No liability to the Pension Benefit Guaranty Corporation under Title IV of ERISA has been or will be incurred with respect to any Plan by Owner Participant with respect to periods prior to the Closing Date;

(iii) At no time since September 2, 1974, has (A) Owner Participant or (B) any employer other than Owner Participant that is treated as a single employer under Section 414(b), 414(c), 414(m) or 414(o) of the Code (a "Current Affiliate") or (C) any employer other than a Current Affiliate that was at any time after September 2, 1974, treated as a single employer under Section 414(b), 414(c) 414(m) or 414(o) of the Code (a "Former Affiliate"), incurred any liability which would subject Buyer to liability under Section 4062 of ERISA; and

(iv) At no time since September 26, 1980, has Owner Participant, any Current Affiliate or any Former Affiliate incurred any withdrawal liability to any multiemployer plan, within the meaning of Section 3(37) of ERISA, which liability could subject Buyer to liability under Section 4201 of ERISA.

(h) Lien. The execution, delivery and performance of this Agreement, the Pledge Agreement, the Trust Agreements, the Assignment Agreement, the Standby Option Agreement and the other Loan Documents, do not and will not result in the creation or imposition of any Lien on any of the properties or assets of Owner Participant, except as contemplated by this Agreement. No Liens exist on or against any part of the Security as the result of acts or omissions of or claims against Owner Participant except as provided for in the Trust Agreements and the Leases.

(i) Execution, Binding Effect. This Agreement has been duly executed and delivered by Owner Participant and constitutes, and any other Loan Document when executed and delivered by Owner Participant will constitute, the legal, valid and binding obligations of Owner Participant enforceable in accordance with their respective terms.

(j) Litigation. There are no actions, suits or proceedings (whether or not purportedly on behalf of Owner Participant) pending or, to the knowledge of Owner Participant, threatened against or affecting Owner Participant or any of its properties before or by any court, arbitrator or governmental body, which (i) relate to any of the Security or to any of the transactions contemplated by this Agreement, or (ii) would, if determined adversely to Owner Participant, have a material adverse effect on the financial condition, business or operations of Owner Participant or the ability of Owner Participant to perform its obligations under this Agreement or any other Loan Document.

(k) Taxes. Owner Participant has filed all tax returns (Federal, state and local) required to be filed on behalf of Owner Participant or the Trust Estates, if any, (except those as to which valid extensions of time have been granted) and paid all taxes, assessments, fees and other governmental charges imposed upon Owner Participant or the Trust Estates, which are due and payable (except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided). All tax liabilities of Owner Participant are adequately provided for, and Owner Participant knows of no proposed additional tax assessment against it, not adequately provided for. The provision for taxes on the books of Owner Participant is adequate for Owner Participant for each of its current fiscal periods.

(l) Disclosure. No representation, information, exhibit or report furnished by Owner Participant to the Lender in connection with the negotiation of the Loan, the Note, the Loan Documents, the Trust Agreements or the Standby Option Agreement contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein not misleading.

(m) Restrictions on Owner Participant. Except as set forth in the Purchase Agreements, there are no limitations in any indenture, mortgage, deed of trust or other agreement or instrument to which Owner Participant is now a party or by which Owner Participant may now be bound with respect to the incurrence of indebtedness or payment of interest thereon, nor any provision which, by requiring the maintenance of specified amounts of net current assets, ratios of current assets to liabilities, ratios of equity or surplus to debt, or otherwise, directly or indirectly has the effect of such a limitation.

(n) Undisclosed Liabilities. Except (i) for liabilities under the Lease Documents, the Purchase Agreements and the Trust Agreements and (ii) as described in Schedule 4.2(n), Owner Participant does not have any obligations or liabilities of any nature, whether accrued, absolute or contingent or liquidated or unliquidated.

(o) Investment Intent. Owner Participant is acquiring the equity interest in the Trust Estates for its own account, for investment and without a view to any public offer, sale or distribution thereof, and Owner Participant agrees that no disposition will be made of the investment by it without compliance with the Act and applicable state securities laws.

(p) No Plan Assets. Owner Participant is not acquiring the interest in the Beneficial Interests or the Option Interests with the assets of any plan (or its related trust) as defined in Section 4975(e)(1) of the Code or with the assets of any employee benefit plan (or its related trust) as defined in Section 3(3) of ERISA, in either case, as interpreted by the final regulations issued thereunder or any published ruling which may be relied on as a precedent of the Internal Revenue Service and the Department of Labor as in effect on the date this representation is deemed made.

(q) No Consents. Neither the execution and delivery by Owner Participant of any Loan Document to which it is a party, the performance by it of its obligations thereunder, nor the consummation by it of the transactions contemplated by such documents, will require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, any federal or state governmental authority or agency except (i) the filing of UCC financing statements and filings with the ICC and (ii) such as have been obtained, given or accomplished and copies of which have been delivered to the parties hereto, or, except as set forth on Schedule 4.2(e), conflict with or result in the creation or imposition of any Lien upon the Equipment or the Leases or any of its property or assets under any applicable law, governmental rule or regulation or any judgment or order applicable to or binding on it, its corporate charter or bylaws, any indenture, mortgage, deed of trust, or other instrument or agreement to which it is a party or by which it may be bound or to which any of its property or assets may be subject.

(r) Not Investment Company. Owner Participant is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

(s) No Broker's Fee. No broker's, finder's or similar fee is payable in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Owner Participant.

(t) Compliance With Laws. Except as described on Schedule 4.2(t), Owner Participant is in compliance with all applicable statutes, laws and regulations affecting its properties or the operation of its business.

(u) Private Offering. Owner Participant has not, either directly or indirectly, offered the Note or any similar security of Owner Trustee to, or solicited offers to acquire from, or otherwise approached or negotiated with respect thereto with, any Person other than Lender. Neither Owner Participant nor anyone acting on its behalf shall offer the Note or any part thereof or any similar securities for issue or sale to, or solicit any offer to acquire any of the same from, anyone so thereby as to bring the issuance of the Note within the provisions of Section 5 of the Act.

SECTION 4.3 Representations and Warranties of the Lender.

The Lender makes the following representations and warranties to Owner Trustee and Owner Participant:

(a) Corporate Organization. The Lender is a banking corporation duly organized, validly existing and in good standing under the laws of the state of Ohio and has all requisite power and authority to carry on its business as now conducted.

(b) Investment Representation. The Lender is acquiring the Note in the ordinary course of its commercial lending business for its own account.

(c) Corporate Authority. The Lender has taken all corporate action necessary to authorize the execution, delivery and performance of all obligations on its part to be performed hereunder.

(d) No Broker's Fee. No broker's, finder's or similar fee is payable in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Lender.

(e) No Plan Assets. The Lender is not making the Loan with the assets of any plan (or its related trust) as defined in Section 4975(e)(1) of the Code or with the assets of any employee benefit plan (or its related trust) as defined in Section 3(3) of ERISA, in either case, as interpreted by the final regulations issued thereunder or any published ruling which may be relied on as a precedent of the Internal Revenue Service and the Department of Labor as in effect on the date this representation is deemed made.

SECTION 4.4 Survival of Representations.

All representations and warranties made by Owner Trustee, Lender, and Owner Participant in this Agreement, the Trust Agreements, the Standby Option Agreement and the other Loan Documents shall survive the execution and delivery of such instrument and the making of the Loan.

ARTICLE 5

COVENANTS

SECTION 5.1 Covenants of Owner Trustee.

Owner Trustee covenants and agrees in its individual capacity, unless otherwise noted, that from the date of this Agreement until all of the principal amount of and interest due on the Note and all other Obligations due hereunder, under the Note or any other Loan Documents shall have been duly paid in full in lawful money, Owner Trustee will comply or cause to be complied with the following covenants:

(a) Statements and Reports. Owner Trustee will maintain adequate records reflecting all financial transactions of Owner Trustee relating to the Trust Estates, and Owner Trustee will furnish to the Lender the following:

(i) No Default Certificate. Within ten (10) days of the Lender's request therefor, a certificate signed by Owner Trustee to the effect that no Event of Default under this Agreement exists, and that no condition exists which with the passage of time or the giving of notice or both would give rise to an Event of Default hereunder except as specified in such certificate;

(ii) Tax Returns. Within ten (10) days of the Lender's request therefor, Owner Trustee will furnish to the Lender copies of any federal or state income tax returns filed by Owner Trustee on behalf of the Trust Estates; and

(iii) Additional Information. Such other information as the Lender may from time to time reasonably request.

(b) Indebtedness. Owner Trustee, in its trust capacity, shall not at any time create, assume or incur, or become or be liable (directly or indirectly), in respect of any Indebtedness, other than the Obligations created or incurred under this Agreement, the Note or any other Loan Document.

(c) Sales or Transfers. Owner Trustee will not sell, lease, liquidate, transfer, distribute or otherwise dispose of any of the Leases or related Equipment or other Collateral subject to the Lien of this Agreement without the prior written consent of the Lender which consent may be obtained only upon at least 15 business days advance notice except pursuant to the Option Agreements.

(d) Merger. Owner Trustee will not directly or indirectly, merge or consolidate the Trust Estates with or into any Person.

(e) Principal Office. Owner Trustee will maintain the principal place of business, chief executive office and the place at which its books and records are kept within the United States of America, and will give the Lender at least thirty (30) days prior written notice of any change in the location of the Trusts' principal place of business, the chief executive office or the place at which the books and records are kept from the address specified in Section 9.5 hereof.

(f) Default Notice. Owner Trustee, upon obtaining actual knowledge thereof, will give prompt notice in writing to the Lender of any Event of Default hereunder, the giving of any notice of default or of any condition which with the passage of time or the giving of notice or both would give rise to an Event of Default hereunder, and of any development, financial or otherwise, which could materially adversely affect the Trust Estates' business, properties or affairs or the ability of Owner Trustee to perform its obligations under this Agreement, the Note, or under any other Loan Document to which Owner Trustee is a party.

(g) Use of Proceeds. Owner Trustee, in its trust capacity, shall use the proceeds of the Loan as directed by Owner Participant for the purposes set forth in Section 2.2 hereof and for no other purpose.

(h) Further Assurances. Owner Trustee will execute and deliver to the Lender, as requested by it, all further instruments, documents and agreements which may be deemed reasonably necessary and desirable by the Lender to carry out and perform the intent and purpose of this Agreement, the Note and the other Loan Documents.

(i) Taxes and Other Claims. Owner Trustee, in its trust capacity, will promptly pay and discharge (i) all taxes, assessments and governmental charges and levies upon it, in its trust capacity, or the income, profits or property, real, personal or mixed, or any part thereof, of the Trust Estates and (ii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a Lien upon the property of the Trust Estates; provided, however, that Owner Trustee shall not be required to pay or cause to be paid any tax, assessment, charge, levy or claim which is contested in good faith by appropriate proceedings and with respect to which does not involve any danger of sale or forfeiture.

(j) Casualty Losses. Owner Trustee, upon obtaining actual knowledge thereof, will notify the Lender promptly of any and all Casualty Losses of which it has knowledge, and thereafter, comply with Section 2.5 hereof.

(k) Litigation. Owner Trustee will deliver to the Lender promptly after it has actual knowledge of the commencement thereof,

notice in writing of all actions, suits and proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting the Trust Estates.

(l) Inspection. Owner Trustee will permit the Lender, its representatives and agents, to visit and inspect any of the Equipment (to the extent permissible under the Lease Documents relating thereto), Lease Documents, corporate books and financial records of Owner Trustee to examine and make copies of the books of accounts and other financial records of Owner Trustee, and to discuss the affairs, finances and accounts of Owner Trustee with, and to be advised as to the same by, the independent certified public accountants for, Owner Trustee at such reasonable times and intervals as the Lender may designate.

(m) Amendments to Lease Documents. Owner Trustee shall not (i) amend, modify or alter any of the Lease Documents subject to the Lien of this Agreement, or any of the terms or conditions of such Lease Documents, or reduce the amounts of rents or other payments thereunder, or release the Obligors under any Lease from the obligations to be performed by such Obligors without the consent of the Lender which may be granted or withheld in the Lender's sole discretion, or (ii) consent to any amendment, modification or alteration by any of the parties thereto, or grant any waivers thereunder without the prior written consent of the Lender, which shall not be unreasonably withheld.

(n) Liens. Owner Trustee will not grant any Lien in any of the Collateral other than Liens in favor of the Lender and, in its trust capacity, will keep and maintain the Collateral free and clear of all Liens, arising under, by or through Owner Trustee, except Permitted Liens.

(o) Lessee Notices. Owner Trustee will provide to Lender, promptly upon receipt, copies of all certificates, notices, requests or other communications under the Lease Documents, including without limitation, financial statements of Lessee.

(p) Property of Trust Estates. Owner Trustee, in its trust capacity, shall own no assets or Property other than the Collateral, or engage in any business or activity other than those relating to the Collateral.

(q) Leases. Owner Trustee, in its trust capacity, shall fully and timely perform and discharge all obligations of lessor under each of the Leases.

SECTION 5.2 Covenants of Owner Participant.

Owner Participant covenants and agrees that from the date of this Agreement until all of the principal amount of and interest due on the Note and all other Obligations due hereunder, under the Note or any other Loan Documents shall have been duly paid in full in lawful money, Owner Participant will comply or cause to be complied with the following covenants:

(a) Removal of Owner Trustee. Unless prevented by applicable law (including court order), Owner Participant will promptly remove the institution serving as Owner Trustee if such institution shall become bankrupt, insolvent or be subject to reorganization in any other proceeding under the federal Bankruptcy Code or be subject to a receivership or other exercise of similar remedies by the Federal Deposit Insurance Corporation. Under no other circumstances will Owner Participant remove or replace the institution serving as Owner Trustee without the consent of the Lender, which consent may be granted or withheld in the Lender's sole discretion.

(b) No Termination or Amendment Without Consent. Owner Participant will not, without Lender's prior written consent, terminate or revoke the Trust Agreements or instruct Owner Trustee to terminate any Loan Document in violation of the terms thereof, or amend or supplement the Trust Agreements in any manner other than in accordance with the terms thereof that would adversely affect the interests of Lender.

(c) Liens. Owner Participant will not directly or indirectly create, incur, assume or suffer to exist any Lien, except Permitted Liens, attributable to it with respect to the Security. Owner Participant agrees that it will, at its own cost and expense, promptly take such action as may be necessary duly to discharge any such Lien.

(d) Taxes. For the benefit of (and solely of) the Lender, and Owner Trustee, Owner Participant will pay to the Trust Estates all taxes on, based on, or measured by, gross or net income or capital or net worth of the Trust Estates, if any, to the extent that payment of such taxes is necessary in order to protect, save and hold harmless the Lender from and against any actual reduction in the amount payable from the Trust Estates or the Security to the Lender or any other amounts payable to Lender under this Agreement, the Note or any other Loan Documents.

(e) Financial Statements. Owner Participant will maintain an adequate system of accounting in which complete entries are made in accordance with generally accepted accounting principles reflecting all financial transactions of Owner Participant, and Owner Participant will furnish, or cause to be furnished, to the Lender:

(i) within 90 days after the end of each fiscal year of Owner Participant, annual unaudited financial statements, or unaudited financial statements on a more frequent basis if reasonably requested by Lender, along with (1) a certificate executed by the Chief Financial Officer or Treasurer of Owner Participant that such statements have been properly prepared and fairly and accurately present the financial condition of Owner Participant and the results of operations for such period, have been prepared in accordance with generally accepted accounting principles consistently applied and reflect adequate reserves for all known liabilities and reasonably anticipated losses; and (2) a certificate of the President or Vice President of Owner Participant stating that, to the best of his or her knowledge after due inquiry, (A) Owner Participant has observed and performed each and every covenant and agreement of Owner Participant contained in this Agreement, the Note and the other Loan Documents and (B) no Default or Event of Default hereunder has occurred during such fiscal year or is then in existence, except as specifically indicated; and

(ii) within forty-five (45) days after the end of each fiscal quarter of Owner Participant, a certificate of the President or Vice President of Owner Participant stating that, to the best of his or her knowledge after due inquiry, (A) Owner Participant has observed and performed each and every covenant and agreement of Owner Participant contained in this Agreement, the Note and the other Loan Documents and (B) no Default or Event of Default hereunder has occurred during such quarterly period or is then in existence, except as specifically indicated.

(f) Insurance Amount. Owner Participant will maintain property insurance on each Unit in the amount of the Insurance Amount with reputable carriers naming the Lender as loss payee.

(g) Amendments to Option Agreements and Purchase Agreements. Owner Participant shall not (i) amend, modify or alter any of the Option Agreements or the Purchase Agreements subject to the Lien of this Agreement, or any of the terms or conditions of such Option Agreements or Purchase Agreements or reduce the amounts of payments thereunder, or release any other party thereto from the obligations to be performed by such party without the consent of the Lender which may be granted or withheld in the Lender's sole discretion, or (ii) consent to any amendment, modification or alteration by any of the parties thereto, or grant any waivers thereunder without the prior written consent of the Lender, which shall not be unreasonably withheld.

ARTICLE 6

DEFAULTS AND REMEDIES

SECTION 6.1 Event of Default.

The occurrence of any one or more of the following events shall constitute an Event of Default, provided that there has been satisfied any requirement in connection with such event for the giving of notice or the lapse of time, or the happening of any further condition, event or act, it being agreed that time is of the essence hereof:

(a) Non-Payment. Failure to pay any installment of principal of, premium or interest to the Note when due or any other amount due the Lender under this Agreement for a period of five (5) days; or

(b) Misrepresentation. Any representation or warranty made by Owner Trustee, Owner Participant in this Agreement, the Note, the Assignment Agreement, the Pledge Agreement, the Purchase Agreements, or any other Loan Document, including any certificate, agreement, instrument or written statement contemplated hereby or made or delivered pursuant hereto or in connection herewith, shall prove to have been incorrect in any material respect as of the date on which made; or

(c) Breach of Covenant. Failure by Owner Trustee or Owner Participant in the observance or performance of any other material term, covenant or agreement contained in, or made in connection with, this Agreement, any Loan Document, the Assignment Agreement and Pledge Agreement on its part to be performed or observed and any such failure shall remain unremedied for twenty (20) days after written notice from Lender to Owner Trustee and Owner Participant specifying such failure of observance or performance, provided that Lender shall not be required to provide Owner Trustee and Owner Participant written notice of a breach of any of Section 5.1(b), 5.1(c), 5.1(d), 5.1(m), 5.2(g) or 5.2(b) hereunder; or

(d) Default under Leases, Purchase Agreements or Option Agreement. An Event of Default under any Lease or a default under the terms of any Purchase Agreement or Option Agreement shall have occurred and be continuing; or

(e) Insolvency of Owner Trustee. Owner Trustee shall be or become insolvent, or be adjudicated a bankrupt or insolvent, or admit its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or Owner Trustee shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of their property, or such receiver, trustee or similar officer shall

be appointed without the application or consent of Owner Trustee, and such appointment shall continue undischarged for a period of forty-five (45) days; or Owner Trustee shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding shall be instituted (by petition, application or otherwise) against Owner Trustee and shall remain undismissed for a period of forty-five (45) days; or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of Owner Trustee and such judgment, writ, or similar process shall not be released, vacated or fully bonded within forty-five (45) days after its issue or levy; unless in each case, Owner Participant shall have removed Owner Trustee as contemplated by Section 5.2(a) hereof and such removal shall become effective promptly; or

(f) Insolvency of Owner Participant. Owner Participant shall be or become insolvent, or be adjudicated a bankrupt or insolvent, or admit its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or Owner Participant shall apply for or consent to the appointment of any receiver, trustee, or similar officer for it or for all or any substantial part of their property, or such receiver, trustee or similar officer shall be appointed without the application or consent of Owner Participant, and such appointment shall continue undischarged for a period of forty-five (45) days; or Owner Participant shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding shall be instituted (by petition, application or otherwise) against Owner Participant and shall remain undismissed for a period of forty-five (45) days; or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of Owner Participant and such judgment, writ, or similar process shall not be released, vacated or fully bonded within forty-five (45) days after its issue or levy; or

(g) Contest Loan. The validity or enforceability of this Agreement, the Note, the Assignment Agreement or any of the other Loan Documents shall be contested by Owner Trustee or Owner Participant.

SECTION 6.2 Remedies.

(a) Action Upon Event of Default. If any Event of Default exists, Lender may declare the principal of the Loan due and

payable immediately by giving notice to Owner Trustee and upon such acceleration, such principal and accrued interest thereon shall become due and payable immediately without presentment, demand, protest or further act or notice of any kind, all of which are hereby waived. Upon such acceleration, Lender, as assignee hereunder of the Leases or as secured party hereunder, or otherwise, may exercise any or all the rights and powers and pursue any or all of the remedies permitted by this Section 6.2.

(b) Legal Proceedings. If any one or more Events of Default exists, Lender may proceed to protect and enforce its rights by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

(c) No Waiver. Neither failure nor delay on the part of Lender to exercise any right, remedy, power or privilege provided for herein or in the Note by statute or at law or in equity or otherwise shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(d) Foreclosure; Power of Sale. If any Event of Default occurs pursuant to this Section 6.2, Lender may, at its option, at any time:

(i) proceed at law or in equity or otherwise to enforce the payment of the Loan at the time outstanding in accordance with the terms hereof and of the Note and, if the outstanding principal amount of the Loan becomes due and payable immediately pursuant to this Section 6.2 (or if the final installment of the Loan is not paid when due), to foreclose the Liens of this Agreement in one or more proceedings or, to the extent permitted by law, in one or more public or private, judicial or nonjudicial sales of all or part of the Security, or any interest therein or proceed to take either of such actions; or

(ii) sell, assign, transfer and deliver the whole or, from time to time, any part of the Security or any interest in any part thereof, at private sale or public auction, with or without demand, advertisement or notice (except as expressly provided for below in this Section 6.2(d)(ii) for cash or credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as Lender in its sole discretion may determine, or as may be required by law. Lender shall give Owner Trustee at least twenty (20) calendar days' written notice (which Owner Trustee

agrees is reasonable notification within the meaning of Section 9-504(3) of the Ohio Uniform Commercial Code) of any public or private sale. The notice in case of public sale shall state the time and place fixed for such sale. Any such public sale shall be held at such time or times within ordinary business hours as Lender shall fix in the notice of sale. Lender shall not be obligated to make any sale pursuant to any such notice. Lender may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for such sale, and any such sale may be made at any time or place to which the same may be so adjourned without further notice or publication.

(e) Lender Authorized to Execute Deeds, etc. Owner Trustee and Owner Participant hereby unconditionally and irrevocably appoint Lender as their true and lawful attorney-in-fact, to the extent permitted by applicable law, in each of their names and stead and on their respective behalf, for the purpose of effectuating any sale, assignment, transfer or delivery hereunder, if an Event of Default exists, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such deeds, bills of sale, assignments, releases and other proper instruments as Lender may reasonably consider necessary or appropriate, with full power of substitution, Owner Trustee and Owner Participant hereby ratifying and confirming all that such attorneys or any substitute shall lawfully do by virtue hereof. If so requested by Lender or purchaser, Owner Trustee and Owner Participant shall ratify and confirm any such lawful sale, assignment, transfer or delivery by executing and delivering to Lender or such purchaser, without representation or warranty (express or implied) by Owner Trustee and Owner Participant (except as to the absence of Liens), and without recourse, all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

(f) Purchase of Security by Lender. Lender may be a purchaser of the Security or of any part thereof or of any interest therein at any sale thereof, whether pursuant to foreclosure or power of sale or otherwise hereunder, and may apply upon the purchase price the indebtedness secured hereby owing to such purchaser, to the extent of such purchaser's distributive share of the purchase price. Any such purchaser shall, upon any such purchase, acquire title to the properties so purchased, free of the Liens of this Agreement.

(g) Receipt a Sufficient Discharge to Purchaser. Upon any sale of the Security or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise hereunder, the receipt of the officer making the sale under judicial proceedings or of Lender shall be sufficient discharge to

the purchaser for the purchase money, and the purchaser shall not be obliged to see to the application thereof.

(h) Application of Proceeds of Sale. The proceeds of any sale of the Security or any part thereof or any interest therein, whether pursuant to foreclosure or power of sale or otherwise, together with any moneys at the time held by Lender as part of the Security, shall be applied in the order of priority set forth in Section 2.7 hereof.

(i) Appointment of Receiver. If an Event of Default exists, Lender shall, to the extent permitted by law, be entitled to the appointment of a receiver for all or any part of the Security, whether such receivership be incidental to a proposed sale of the Security or otherwise. Each of Owner Trustee and Owner Participant hereby consents to the appointment of such receiver and agrees not to oppose any such appointment.

(j) Possession, Management and Income. If an Event of Default exists, Lender may take possession of the Security or any part thereof without judicial process, by summary proceedings, or otherwise, and may remove Owner Trustee and all other Persons claiming under or through Owner Trustee and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof. At the request of Lender, Owner Trustee shall promptly execute and deliver to Lender such instruments of title and other documents as Lender may deem necessary or advisable to enable Lender or an agent or representative designated by Lender, at such time or times and place or places as Lender may specify, to obtain possession of all or any part of the Security. If Owner Trustee fails for any reason to execute and deliver such instruments and documents after such demand by Lender, Lender may obtain a judgment conferring on Lender the right to immediate possession and requiring Owner Trustee to deliver such instruments and documents to Lender, to the entry of which judgment Owner Trustee specifically consents. Lender shall be under no liability for or by reason of any such taking of possession, removal or holding, operation or management.

(k) Right of Lender to Perform Covenants, etc. If either Owner Trustee or Owner Participant fails to make any payment or perform any act required to be made or performed hereunder, or any other Loan Document (excluding the Note) to which Owner Trustee or Owner Participant is a party or if either Owner Trustee or Owner Participant fails to discharge any Lien affecting the Security that it is required to discharge under this Agreement, without notice to or demand upon Owner Trustee or Owner Participant and without waiving or releasing any obligation or default, Lender may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of

Owner Trustee or Owner Participant and may take all such action with respect thereto as, in Lender's opinion, may be necessary or appropriate therefor. All sums so paid by Lender and all costs and expenses (including, without limitation, reasonable legal fees and expenses) so incurred, together with interest thereon at the Default Interest Rate from the date of payment or occurrence to the date paid by Owner Trustee or Owner Participant, shall constitute additional Indebtedness secured by this Agreement and shall be paid by Owner Trustee to Lender.

(l) Costs and Expenses. Upon the exercise of any of Lender's rights under this Section 6.2, Owner Trustee shall pay all costs and expenses of whatsoever kind or nature incurred by Lender in connection with such remedies, including without limitation, legal fees and expenses, and any taxes, assessments or other charges.

(m) Other Remedies. If an Event of Default exists, Lender may exercise all of its rights and remedies against Owner Trustee and any Security provided herein or in any other agreement between Owner Trustee and Lender and exercise all rights granted to a secured party under the UCC or otherwise.

(n) Condition Precedent. Prior to exercising any of its remedies provided for in this Section 6.2, the Lender shall have executed and delivered to Owner Participant a Remarketing Services Agreement in form and substance substantially identical to that attached hereto as Exhibit 6.2(n).

ARTICLE 7

CLOSING

SECTION 7.1 Place, Time and Disbursement of Loan.

The closing of the Loan shall take place at the offices of Keating, Muething & Klekamp on March 19, 1992 or at such other location or time agreed upon by the parties ("Closing Date"). At the Closing, upon satisfaction of all applicable conditions set forth herein, the Lender shall disburse the Loan in accordance with written disbursement instructions of Owner Trustee delivered by Owner Trustee to the Lender.

SECTION 7.2 Documents to be Delivered to the Lender.

At the Closing, Owner Trustee shall deliver to the Lender the following documents, each dated the date of the Closing unless otherwise herein indicated, in form and substance satisfactory to the Lender and its counsel:

(a) Trust Documentation. Copies of the Trust Agreements (and all amendments thereto) of Owner Trustee certified on the date of the Closing by Owner Trustee to the effect that the Trust Agreements have not been amended.

(b) Resolutions. Resolutions of Owner Trustee and Owner Participant authorizing and approving the execution, delivery and performance of this Agreement, the Note, the Assignment Agreement, the other Loan Documents and the transactions contemplated hereby and thereby.

(c) Opinion of Owner Trustee's Counsel. A favorable opinion of Day, Berry & Howard or other counsel satisfactory to the Lender, addressed to the Lender.

(d) Opinion of Owner Participant's Counsel. A favorable opinion in a form satisfactory to Lender of Jackson, Tufts, Cole & Black or other counsel satisfactory to the Lender, addressed to the Lender.

(e) Purchase Agreements. Original executed copies of the Purchase Agreements together with all exhibits and schedules thereto certified by an officer of Owner Participant that such documents are true, correct and complete as of the Closing Date.

(f) Option Agreements. Original executed copies of the Option Agreements together with all exhibits and schedules thereto certified by an officer of Owner Participant that such documents are true, correct and complete as of the Closing Date.

(g) Note. The Note drawn to the order of the Lender or its designated nominee, if any, duly executed by Owner Trustee.

(h) Disbursement Instructions. Loan disbursement instructions in a form satisfactory to Lender.

(i) Assignment Agreement. The Assignment Agreement duly executed by Owner Participant.

(j) Pledge Agreement. The Pledge Agreement duly executed by Owner Participant.

(k) Directions. Irrevocable directions from Owner Participant to Owner Trustee pursuant to Section 3.04 of the Trust Agreements.

(l) UCC Financing Statements. (1) UCC Financing Statements executed by Owner Trustee relating to the Leases, Equipment and the other Collateral in form and substance satisfactory to Lender, and (2) UCC Financing Statement executed by Owner Participant relating

to the Assigned Rights, Beneficial Interests and the Option Interests.

(m) Good Standing Certificates. Good standing certificates for Owner Participant certified by the Secretary of State of California not less than twenty (20) days prior to closing.

(n) Officers' Certificates. Officers certificate in a form satisfactory to Lender, for each of Owner Trustee and Owner Participant duly executed by their respective officers.

(o) Certified Articles. Articles of Incorporation for Owner Participant certified by the Secretary of State of California.

(p) Delivery of Lease Documents. Delivery to Lender of executed originals of all Leases and Lease Documents in the possession of Owner Trustee or Owner Participant.

(q) Standby Option Agreement. The Standby Option Agreement duly executed by Owner Trustee and Owner Participant.

(r) Insurance Certificates. Certificates evidencing the property insurance required by Section 5.2(f) hereof.

(s) Other Documents. Such other documents, agreements or certificates as the Lender or its counsel may request.

(t) Representations, Warranties, and Performance. All of the representations and warranties of Owner Trustee and Owner Participant contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date. Owner Trustee and Owner Participant shall have performed in all material respects all of the agreements and covenants required by this Agreement to be performed by it on or prior to the Closing date. Lender shall have been furnished with a certificate of Owner Trustee and a certificate of Owner Participant, dated the Closing Date, certifying to the foregoing.

SECTION 7.3 No Action To Prevent Completion.

There shall not be in effect on the Closing Date any order restraining, enjoining or otherwise preventing consummation of the transactions contemplated by this Agreement and on the Closing Date, there shall not be pending or, in the reasonable opinion of Lender, threatened, any action, suit or other proceeding before or by any governmental body or any other person to restrain, enjoin or otherwise prevent consummation of the transactions contemplated by this Agreement or to recover damages in any material amount from Lender as a result of this Agreement or any of the transactions contemplated thereby.

ARTICLE 8

GUARANTY

SECTION 8.1 Guaranty.

Owner Participant hereby unconditionally guarantees (a) the due and punctual payment of the principal of and interest on such Note, when and as the same shall become due and payable, whether at maturity, by declaration thereof or otherwise and the due and punctual payment of interest on the overdue principal of, and interest on the Note, to the extent lawful, in accordance with the terms of such Note; (b) the due and punctual performance of each and every other Obligation; and (c) in the case of any extension of time of payment or renewal of any Note, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, at stated maturity, by acceleration or otherwise. Owner Participant hereby agrees that its obligations hereunder shall be absolute and unconditional, irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of any such Note, any failure to enforce the provisions of any such Note, any waiver, modification or indulgence granted to Owner Trustee with respect thereto, by the holder of such Note, or any other circumstances which may otherwise constitute a legal or equitable discharge of a surety or guarantor. Owner Participant hereby waives diligence, presentment, filing of claims with a court in the event of merger or bankruptcy of Owner Trustee, any right to require a proceeding first against Owner Trustee, the benefit of discussion, protest or notice with respect to any such Note or the Indebtedness evidenced thereby and all demands whatsoever, and covenants that this Guarantee will not be discharged as to any such Note except by payment in full of the principal thereof and interest thereon.

SECTION 8.2 Subrogation.

Owner Participant shall be subrogated to all rights of the Lender against Owner Trustee in respect of any amounts paid to the Lender by Owner Participant pursuant to the provisions of this Guarantee; provided, however that Owner Participant shall not be entitled to enforce, or to receive any payments arising out of or based upon, such right of subrogation until the principal of and interest on the Note shall have been paid in full.

ARTICLE 9

MISCELLANEOUS

SECTION 9.1 Remedies Cumulative; No Waiver.

The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

No failure or delay on the part of the Lender or any holder of the Note in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

SECTION 9.2 Obligation to Pay, Expenses and Taxes.

Owner Participant agrees, whether or not the transactions contemplated by this Agreement shall be consummated, to pay or reimburse the Lender, upon demand at any time and as often as the occasion therefor may require, for all costs and expenses incurred by the Lender (i) in connection with the preparation, amendment, or modification of the Loan and the Loan Documents including without limitation appraisal and inspection fees and expenses and the reasonable fees and out-of-pocket expenses on or before the Closing Date of Messrs. Keating, Muething & Klekamp, counsel for the Lender, with respect thereto and of local counsel, if any, who may be retained by said counsel with respect thereto; (ii) all out-of-pocket costs and expenses of the Lender incurred after the Closing Date in connection with the administration of this Agreement or any other Loan Document, including without limitation, reasonable legal fees and expenses and all costs and expenses incurred or sustained by Lender in connection with the perfection and continuation of the rights of Lender in connection with the Loan and the granting by Lender of any consents, approvals or waivers under any of the Loan Documents but excluding all such costs and expenses incurred by Lender in exercising its remedies under Section 6.2 hereof (which costs and expenses shall be covered by Section 6.2(1)); and (iii) all stamp, other taxes and license fees, if any, payable or determined to be payable by Lender in connection with the execution and delivery of the Loan Documents, and Owner Participant shall indemnify and save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes. The obligations of Owner Participant under this Section 9.2 shall survive payment of the Note and termination of this Agreement and the other Loan Documents.

SECTION 9.3 Severability.

Any provision of this Agreement which is prohibited and unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 9.4 Entire Agreement; Amendments.

This Agreement and the instruments referred to herein constitute the entire agreement of the parties hereto with respect to the subject matter hereof.

No amendment, modification, termination, or waiver of any provision of this Agreement or of the Note nor consent to any departure by Owner Trustee or Owner Participant therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Owner Trustee or Owner Participant in any case shall entitle Owner Trustee or Owner Participant to any other or further notice or demand in similar or other circumstances.

SECTION 9.5 Notices.

All notices, requests, demands and other communications provided for hereunder shall be in writing, and if addressed to Owner Trustee, mailed or delivered to it, addressed to them at:

State Street Bank and Trust Company
c/o State Street Bank and Trust Company
of Connecticut, N.A.
750 Main Street
Hartford, Connecticut 06103
Attention: Corporate Trust Department

and, if to Owner Participant, mailed or delivered to it, addressed to it at:

Compass Rail Corporation
555 California Street
Suite 2810
San Francisco, California 94104
Attention: President

and, if to the Lender, mailed or delivered to it, addressed to it at:

The Provident Bank
One East Fourth Street
Cincinnati, Ohio 45202
Attention: Forest C. Frank
Vice President

with a copy to:

Keating, Muething & Klekamp
One East Fourth Street
1800 Provident Tower
Cincinnati, Ohio 45202
Attention: Richard D. Siegel, Esq.

or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All notices, requests, demands and other communications provided for hereunder shall be effective when deposited in the mail, first class, postage prepaid or delivered to the telegraph company charges prepaid, addressed as aforesaid.

SECTION 9.6 Binding Effect; Assignment.

This Agreement shall be binding upon and inure to the benefit of Owner Trustee, Owner Participant and the Lender and their respective successors and assigns. Neither Owner Trustee nor Owner Participant shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lender which consent may be granted or withheld in the Lender's sole discretion.

The Lender shall have the right to assign all or any part of its obligations to make the loan to any affiliate, subsidiary, or any other Person. In the event of such assignment by the Lender, the assignee in addition to the Lender, shall be deemed to have been named the "Lender" in the first paragraph of this Agreement and all representations, warranties and covenants of Owner Trustee and Owner Participant made herein or any other Loan Document shall be deemed to have been made to and shall inure to the benefit of such assignee.

SECTION 9.7 Execution in Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

SECTION 9.8 Reference to Headings.

The Article and Section headings and the Index used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

SECTION 9.9 Governing Law.

The Loan Documents shall be deemed to be contracts made under the laws of, executed, and delivered in the State of Ohio, and for all purposes shall be construed in accordance with the laws of said State.

SECTION 9.10 Termination.

Unless the Closing has occurred prior thereto, this Agreement and, except as herein provided, all the rights of the parties hereto, shall terminate at the close of business March 31, 1992. Notwithstanding the foregoing, Section 9.2 hereof shall survive the termination of this Agreement. All warranties, representations, and covenants made by the Lender, Owner Trustee and Owner Participant herein or in any certificate or other instrument delivered by the Lender, Owner Trustee or Owner Participant under this Agreement, shall be considered to have been relied upon by the Lender, Owner Trustee, or Owner Participant as the case may be, and shall survive the Closing regardless of any investigation made by Owner Trustee, the Lender or Owner Participant, as the case may be, or on Owner Trustee's, the Lender's or Owner Participant's behalf. All statements in any such certificate or other instrument shall constitute warranties and representations by Owner Trustee or Owner Participant, as the case may be, hereunder.

SECTION 9.11 Designation of Forum.

Each of Owner Trustee and Owner Participant hereby agrees (a) that any suit, action, or proceeding pertaining to this Agreement may be instituted in the Courts of the State of Ohio or the United States District Court for the Southern District of Ohio, Western Division, and (b) irrevocably and unconditionally submits and consents to the jurisdiction and venue of any such court for such purpose. Each of Owner Trustee and Owner Participant hereby irrevocably appoints CT Corporation System, and its duly constituted successor(s), if any, as the agent for service of

process in any proceeding instituted hereunder and Owner Trustee and Owner Participant agree that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to Owner Trustee and/or Owner Participant, as the case may be, in the manner specified in Section 9.5 hereof, shall, upon receipt by Owner Trustee and/or Owner Participant, as the case may be, constitute proper service on Owner Trustee and/or Owner Participant, as the case may be, for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this Section 9.11, any of the parties shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Agreement against any of the others in any other competent court.

SECTION 9.12 Participation.

Notwithstanding any other provision of this Agreement, Owner Trustee and Owner Participant understand that the Lender may enter into participation agreements with participating lenders whereby the Lender will allocate certain percentages of its commitment on the Loan and Note to such participating lenders. Owner Trustee and Owner Participant acknowledge that, for the convenience of all parties, this Agreement is being entered into with the Lender only and that its obligations under this Agreement are undertaken for the benefit, and as an inducement to, each of any such participants as well as the Lender, and Owner Trustee and Owner Participant hereby grant to each such participating lender, to the extent of its participation in the Loan, the right to set off deposit accounts, if any, maintained by Owner Trustee and Owner Participant with such participating lender. Lender, in granting participations, shall comply with all laws deemed applicable to such transaction by Lender. No such participation agreement shall operate to reduce the obligations of Lender hereunder.

SECTION 9.13 Non-Recourse.

Notwithstanding anything herein to the contrary or in any other Loan Document, all payments, including payments of principal and interest, to be made by Owner Trustee under this Agreement shall, except as otherwise set forth in this Section 9.13, be made only from the Collateral in accordance with the terms hereof. Lender agrees that insofar as Owner Trustee is concerned, Lender will look solely to the Collateral, to the extent available for distribution to Lender as herein provided, and that (except as expressly provided in this Agreement or in any other Loan Document) Owner Trustee shall not be personally liable to the Lender for any amounts payable under the Note or this Loan Agreement or any other Loan Document. Notwithstanding anything to the contrary contained in this Section 9.13, the limitation on personal liability described herein shall not (a) discharge or

release any Loan or any indebtedness evidenced by the Note; (b) limit Owner Trustee's liability for (or the Lender's right to resort to the Collateral for) loss resulting wholly or in part from any breach of representations and warranties made by Owner Trustee expressly in its individual capacity or any costs and expenses incurred by Lender in connection with the entering into or giving or withholding of any future amendments, supplements, waivers or consents requested by Owner Trustee with respect to this Agreement or any other Loan Document; (c) preclude Lender from exercising any right or invoking any remedy as to the Collateral upon an Event of Default to the extent permitted hereunder; (d) prejudice the rights of Lender in the Collateral against any Person; or (e) limit Owner Trustee's liability for the payment and performance of the obligations incurred in its individual capacity under Section 5.1 of this Loan Agreement.

SECTION 9.14 Waiver of Jury Trial.

AS A SPECIFICALLY BARGAINED INDUCEMENT FOR THE LENDER TO EXTEND CREDIT TO OWNER TRUSTEE AND OWNER PARTICIPANT, AND AFTER HAVING THE OPPORTUNITY TO CONSULT COUNSEL, EACH OF OWNER TRUSTEE AND OWNER PARTICIPANT HEREBY EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO THIS AGREEMENT OR ARISING IN ANY WAY FROM THE OBLIGATIONS.

SECTION 9.15 Other Waivers.

Each of Owner Trustee and Owner Participant waives notice of nonpayment, demand, notice of demand, presentment, protest and notice of protest with respect to the Obligations, or notice of acceptance hereof, notice of Loan made, credit extended, Security received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers, as of the date first above written.

WITNESSES:

THE PROVIDENT BANK, Lender

Michael Brown
Paul King

BY: [Signature]

Name: Forest C. Frank
Title: V. P.

STATE STREET BANK AND TRUST
COMPANY, not in its individual
capacity except as expressly
stated herein but as Owner
Trustee

BY: _____

Name: _____
Title: _____

COMPASS RAIL CORPORATION, Owner
Participant

BY: _____

Name: _____
Title: _____

BROWNM/PR67071Y/LOAN AND SECURITY AGREEMENT

This is to certify that this is a true and exact copy of the original.

Laurie Shelton

Notary Public
625 Indiana Avenue, NW
Washington, DC 20004

Laurie Shelton
Notary Public, District of Columbia
My Commission Expires Jan. 1, 1997

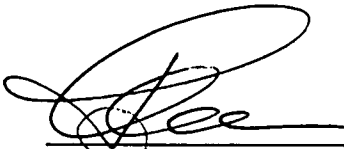
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers, as of the date first above written.

WITNESSES:


THE PROVIDENT BANK, Lender

BY: _____
Name: _____
Title: _____

STATE STREET BANK AND TRUST
COMPANY, not in its individual
capacity except as expressly
stated herein but as Owner
Trustee



Mike M. Carter


BY: 
Name: DONALD E. SMITH, VICE PRESIDENT
Title: _____

COMPASS RAIL CORPORATION, Owner
Participant

BY: _____
Name: _____
Title: _____

BROWNM/PR67071Y/LOAN AND SECURITY AGREEMENT

This is to certify that this is a true and exact copy of
the original.



Notary Public
625 Indiana Avenue NW
Washington, DC 20004

Laurie Shelton
Notary Public, District of Columbia
My Commission Expires Jun. 1, 1997

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers, as of the date first above written.

WITNESSES:

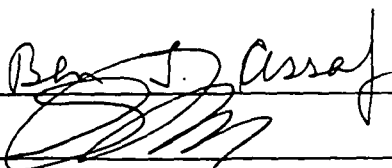
THE PROVIDENT BANK, Lender


BY: _____
Name: _____
Title: _____

STATE STREET BANK AND TRUST
COMPANY, not in its individual
capacity except as expressly
stated herein but as Owner
Trustee

BY: _____
Name: _____
Title: _____


COMPASS RAIL CORPORATION, Owner
Participant



BY: 
Name: STEPHEN C. BIENEMAN
Title: PRESIDENT

BROWNM/PR67071Y/LOAN AND SECURITY AGREEMENT

This is to certify that this is a true and exact copy of
the original.



Notary Public
625 Indiana Avenue NW
Washington, DC 20004

Laurie Shelton
Notary Public, District of Columbia
My Commission Expires Jan. 1, 1997

Schedule 1.1 (ah)

PROMISSORY NOTE

\$22,600,000.00

March 31, 1992
Cincinnati, Ohio

THIS PROMISSORY NOTE ("Note") is made and entered into on the date stated hereinabove jointly and severally by (a) State Street Bank and Trust Company, not in its individual capacity, but solely as Owner Trustee pursuant to a Trust Agreement dated as of March 15, 1978 with Fourth HFC Leasing Corporation, a Delaware corporation, (b) State Street Bank and Trust Company, not in its individual capacity, but solely as Owner Trustee pursuant to a Trust Agreement dated as of March 15, 1978 with Fifth HFC Leasing Corporation, a Delaware corporation, and (c) State Street Bank and Trust Company, not in its individual capacity, but solely as Owner Trustee pursuant to a Trust Agreement dated as of March 15, 1978 with Sixth HFC Leasing Corporation, a Delaware corporation, (collectively, "Borrower") to the order of The Provident Bank (hereinafter, together with its permitted successors and assigns, called "Bank").

This Note has been executed and delivered pursuant to a certain Loan and Security Agreement dated March 31, 1992 among Borrower, Bank and Compass Rail Corporation, as Owner Participant (the "Loan Agreement") and is subject to the terms and conditions of the Loan Agreement, including, without limitation, acceleration upon the terms provided therein. All capitalized terms used herein shall have the meanings assigned to them in the Loan Agreement unless the context hereof requires otherwise.

Borrower, for value received, promises to pay to the order of Bank, in accordance with the Loan Agreement, the principal sum of Twenty-Two Million Six Hundred Thousand and 00/100 Dollars (\$22,600,000.00), or so much thereof as is loaned by Bank pursuant to the provisions of the Loan Agreement together with interest at the annual rate equal to Nine and One Half Percent (9.5%) per annum. Unpaid principal and interest hereunder shall bear interest at the Default Interest Rate in accordance with the terms and provisions of the Loan Agreement. All interest under this Note shall be computed on the basis of a three hundred sixty (360) day year composed of twelve (12) months each having thirty (30) days. This Note is subject to mandatory prepayment upon the terms and conditions set forth in the Loan Agreement. All payments on this Note shall be applied in accordance with the Loan Agreement.

Commencing immediately, principal and interest shall be due and payable in installments as set forth on the schedule attached hereto as Schedule 1 (as may be adjusted pursuant to Section 2.5 of the Loan Agreement) provided that, in any event the last installment payable on this Note shall be in an amount sufficient to pay in full the entire unpaid principal and interest amount of

this Note. All of the indebtedness evidenced by this Note shall, if not sooner due and payable as provided in the Loan Agreement, be in any event absolutely and unconditionally due and payable in full by Borrower on January 2, 1994.

In the event of any Event of Default under the Loan Agreement, or any of the other Loan Documents, this Note shall, at the direction of Bank, become immediately due and payable, upon demand, except that if there shall be an Event of Default under Sections 6.1(e) or 6.1(f) of the Loan Agreement, this Note shall automatically and immediately be due and payable without demand.

This Note and all payments of principal and interest, and all other charges due hereunder, are secured, pursuant to the terms of the Loan Agreement, and the other Loan Documents, including without limitation, the Assignment Agreement and the Pledge Agreement.

Borrower, all indorsers hereof or any other party hereto or any guarantor hereof (collectively "Obligors") and each of them: (i) waive(s) presentment, demand, notice of demand, protest, notice of protest, and notice of nonpayment and any other notice required to be given by law in connection with the delivery, acceptance, performance, default or enforcement of this Note, of any indorsement or guaranty of this Note or of any document or instrument evidencing any security for payment of this Note; and (ii) consent(s) to any and all delays, extensions, renewals or similar modifications of this Note or forbearance or waivers of any term hereof or release or discharge by Bank of any of Obligors or release, substitution or exchange of any security for the payment hereof or the failure to act on the part of Bank or any indulgence shown by Bank, from time to time and in one or more instances, (without notice to or further assent from any of Obligors) and agree(s) that no such action, failure to act or failure to exercise any right or remedy, on the part of Bank shall in any way affect or impair the obligations of any Obligors or be construed as a waiver by Bank of, or otherwise affect, any of Bank's rights under this Note, under any indorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note. Borrower and all indorsers further agree to reimburse Bank for all advances, charges, costs and expenses, including reasonable attorney's fees, incurred or paid in exercising any right, power or remedy conferred by this Note, or in the enforcement thereof.

All payments including payments of principal, premiums, if any, and interest, to be made by Borrower hereunder or under the Loan Agreement, shall be made only from the income and proceeds from the Collateral (as defined in the Loan Agreement) (except as otherwise expressly provided in the Loan Agreement) and only to the extent that Borrower shall at any time and from time to time have received sufficient income or proceeds from the Collateral to make such payments in accordance with the terms of the Loan Agreement;

and each holder hereof, by its acceptance of this Note, agrees that insofar as Borrower is concerned such holder will look solely to the income and proceeds from the Collateral (except as provided in the foregoing parenthetical phrase in this sentence) and that Borrower except as otherwise expressly provided in the Loan Agreement or any other Loan Document (as defined in the Loan Agreement) is not personally liable to the holder hereof for any amounts payable under this Note or the Loan Agreement or any such other Loan Document. This limitation on liability of Borrower is subject only to the provisions of Section 9.13 of the Loan Agreement.

Notwithstanding anything to the contrary herein or in the Loan Documents, neither this Note nor the Loan shall ever bear interest at a rate per annum greater than the maximum rate permitted by applicable law as the same exists from day to day during the term hereof (the "Maximum Rate"). If at any time the interest on this Note or the Loan shall exceed the Maximum Rate, thereby causing the interest on this Note and the Loan to be limited to the Maximum Rate, then any subsequent reduction in the rate of interest on this Note or the Loan shall not reduce the rate of interest on this Note or the Loan below the Maximum Rate until the aggregate amount of interest accrued on this Note and the Loan equals the aggregate amount of interest which would have accrued on this Note and the Loan if the interest provided for hereunder had at all times been in effect.

The provisions of this Note shall be governed by and interpreted in accordance with the laws of Ohio. As a specifically bargained inducement for Bank to extend credit to Borrower, and after having the opportunity to consult counsel, **BORROWER HEREBY EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY** in any lawsuit or proceedings related to this Note or arising in any way from any indebtedness or other transactions involving Bank and the undersigned. The undersigned hereby designates all courts of record sitting in Cincinnati, Ohio and having jurisdiction over the subject matter, state and federal, as forums where any action, suit or proceeding in respect of or arising from or out of this Note, its making, validity or performance, shall be prosecuted as to all parties, their successors and assigns, and by the foregoing

designation the undersigned consents to the jurisdiction and venue of such courts. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE OBLIGATIONS OF BORROWER UNDER THIS NOTE.**

STATE STREET BANK AND TRUST COMPANY,
not in its individual capacity but
solely as Owner Trustee under Trust
Agreement dated as of March 15, 1978
with Fourth HFC Leasing Corporation

By: _____
Name:
Title:

STATE STREET BANK AND TRUST COMPANY,
not in its individual capacity but
solely as Owner Trustee under Trust
Agreement dated as of March 15, 1978
with Fifth HFC Leasing Corporation

By: _____
Name:
Title:

STATE STREET BANK AND TRUST COMPANY,
not in its individual capacity but
solely as Owner Trustee under Trust
Agreement dated as of March 15, 1978
with Sixth HFC Leasing Corporation

By: _____
Name:
Title:

Schedule 1.1(d)

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Assignment Agreement") dated as of March 31, 1992 by and between COMPASS RAIL CORPORATION, a California corporation ("Assignor"), and THE PROVIDENT BANK, an Ohio banking corporation ("Secured Party").

This Assignment Agreement has been executed and delivered by Assignor to Secured Party pursuant to Section 3.1 of the Loan Agreement. To induce the Secured Party to enter into the Loan Agreement and to make the Loan thereunder, the Assignor has agreed to assign, transfer and convey to the Secured Party a security interest in the Assigned Rights.

NOW, THEREFORE, in consideration of the Secured Party's Loan to the Owner Trustee, the parties hereby agree as follows:

1. Defined Terms. As used in this Assignment Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the term defined):

"Assigned Rights" means all of Assignor's right, title and interest in the Purchase Agreements which relate in any manner whatsoever to the Trust Estates, Leases and Equipment, including, without limitation, such rights relating to general representations, warranties, covenants and provisions in the Purchase Agreements and the ability to exercise such rights, but excluding any obligations thereunder.

"Loan Agreement" means that Loan and Security Agreement dated March 31, 1992 among Assignor, Secured Party and Owner Trustee, as the same may be amended or modified from time to time.

"Owner Trustee" means State Street Bank and Trust Company ("State Street") in its individual capacity as expressly stated in the Loan Agreement, and otherwise not in its individual capacity but solely as trustee under those three certain Trust Agreements dated as of March 15, 1978 as amended through the date hereof between State Street and Assignor as assignee of Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation and Sixth HFC Leasing Corporation, respectively.

"Purchase Agreements" means, collectively, the three Purchase Agreements of even date herewith between Assignor and each of Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation and Sixth HFC Leasing Corporation providing for the purchase of the Beneficial Interests and the Option Interests, all exhibits and schedules thereto and the related instruments of transfer and assignment; and "Purchase Agreement" means any of the Purchase Agreements.

All other capitalized terms used herein have the meanings assigned to them in the Loan Agreement unless the context hereof otherwise requires.

2. Assignment of Assigned Rights.

(a) Assignor hereby assigns, transfers and conveys to Secured Party the Assigned Rights and hereby grants to and creates in favor of Secured Party liens and security interests in the Assigned Rights as collateral security for (i) the Guaranty; (ii) the due and punctual payment when due (whether at maturity, by acceleration or otherwise) in full of all amounts due under the Note, the Loan Agreement and any other Loan Document, including all interest, costs and other charges chargeable thereunder to Owner Trustee or due hereunder from Assignor to Secured Party from time to time; (iii) the due and punctual performance and observance by Assignor and Owner Trustee of their agreements, obligations, liabilities and duties under this Assignment Agreement, the Loan Agreement, and the other Loan Documents; (iv) all of Owner Trustee's and Assignor's other debts, obligations or liabilities of whatever nature to Secured Party, due or to become due, direct or indirect, absolute or contingent, whether now existing or hereafter arising; and (v) all costs incurred by Secured Party to obtain, perfect, preserve and enforce the liens and security interests granted by this Assignment Agreement, to collect the obligations secured hereby and to maintain and preserve the Assigned Rights, with such costs including but not limited to expenditures made by Secured Party for reasonable attorneys' fees and other legal expenses and expenses of collection, possession and sale of the Assigned Rights, together with interest on all such costs at the Default Interest Rate (the foregoing subsections (i), (ii), (iii), (iv) and (v) are collectively referred to herein as the "Obligations Secured Hereby").

(b) Upon the occurrence of a Default or Event of Default by Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation or Sixth HFC Leasing Corporation under any Purchase Agreement, Assignor shall promptly notify Secured Party after Assignor becomes aware of such occurrence, and Secured Party shall have the right, but not the obligation, to the exclusion of Assignor, subject to the provisions of the next succeeding sentence hereof, to enforce the Assigned Rights against Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation or Sixth HFC Leasing Corporation; provided, however, that Secured Party shall keep Assignor fully informed as to the progress thereof, consult with Assignor within a reasonable period before any significant action with respect thereto is taken or omitted and consider in good faith any suggestions made by Assignor's counsel. No such proceedings or litigation shall be settled or otherwise compromised with respect to the Assigned Rights without the prior written consent of Assignor, which consent shall not be unreasonably withheld. Notwithstanding anything in the foregoing paragraph, Secured Party shall have sole control over

the conduct of the litigation and enforcement action, and may in its sole discretion select a forum for such litigation. Any and all payments received by Secured Party as a result of such litigation or enforcement action shall be applied in accordance with Section 2.7 of the Loan Agreement. Notwithstanding anything contained in this subsection (b) to the contrary and subject to the rights of Secured Party under this subsection, nothing contained herein shall be deemed to cancel, release or discharge or otherwise limit any of the rights of Assignor against Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation or Sixth HFC Leasing Corporation under the Purchase Agreements.

If Secured Party does not elect to enforce the Assigned Rights against Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation or Sixth HFC Leasing Corporation by giving Assignor notice of such election within twenty (20) days of its receipt of notice from Assignor of the occurrence of a Default or Event of Default under any Purchase Agreement, then Assignor shall have the right to enforce the Assigned Rights against Fourth HFC Leasing Corporation, Fifth HFC Leasing Corporation or Sixth HFC Leasing Corporation with respect to such Default or Event of Default; provided, however, that Assignor shall keep Secured Party fully informed as to the progress thereof, consult with Secured Party within a reasonable period before any significant action with respect thereto is taken or omitted and consider in good faith any suggestions made by Secured Party's counsel; provided, further, that any and all proceeds, payments or other results of the litigation in favor of Assignor shall be and remain a part of the Assigned Rights hereunder and be applied to and for the benefit of Secured Party in accordance with the terms of Section 2.7 of the Loan Agreement.

3. Delivery of Assigned Rights. On the Closing Date, Assignor shall assign the Assigned Rights by delivering to and depositing with Secured Party or its agent an original executed copy of each Purchase Agreement, together with all exhibits and schedules thereto, certified by an officer of Assignor to the effect that each such Purchase Agreement has not been amended since the date of such Agreement, together with all other applicable and appropriate documents and assignments requested by Lender in form suitable to enable Secured Party to effect the assignment of all or any portion of the Assigned Rights.

4. Rights and Remedies upon Default. If any Event of Default (as defined in the Loan Agreement) shall occur and be continuing or Assignor shall fail to make any payment due under the Guaranty, and Secured Party declares the Obligations Secured Hereby to be forthwith due and payable, Secured Party may proceed to protect and enforce its rights under this Assignment Agreement and the other Loan Documents by suit in equity, action at law or any other appropriate proceeding and Secured Party shall have, without limitation, all of the rights and remedies provided by applicable

law, including, without limitation, the rights and remedies of a secured party under the UCC.

5. Indemnification. Assignor agrees to indemnify and hold harmless Secured Party (to the full extent permitted by law) from and against any and all claims, demands, losses, judgments and liabilities for penalties and excise taxes of whatever nature, except such claims, demands, losses, judgments and liabilities arising out of the gross negligence or wilful misconduct of Secured Party, and to reimburse Secured Party for all costs and expenses, including reasonable legal fees and disbursements, growing out of or resulting from the Assigned Rights, this Assignment Agreement or the administration and enforcement or exercise of any right or remedy granted to Secured Party hereunder. In no event shall Secured Party be liable to Assignor for any matter or thing in connection with this Assignment Agreement other than to account for moneys actually received by it in accordance with the terms hereof.

6. Distribution of Proceeds. Upon enforcement of this Assignment Agreement following the occurrence of an Event of Default (as defined in the Loan Agreement), the proceeds of the Assigned Rights shall be applied as received by Secured Party as follows:

First: To the payment of all reasonable costs and expenses incurred or accrued by Secured Party (including the fees and expenses of its attorneys, appraisers and agents) in connection with any proceeding commenced to enforce this Assignment Agreement, the Loan Agreement or the Note or in connection with the taking, holding, selling and the like of the Assigned Rights.

Second: To the payment of all amounts then due and payable on the Obligations Secured Hereby (whether in respect of principal or interest) first to interest due, then in reduction of the principal sum then outstanding, and any balance to the remaining Obligations Secured Hereby.

Third: To the payment of any surplus to Assignor or any other person or entity legally entitled thereto.

7. Further Assurances. The Assignor agrees that at any time and from time to time upon the request of Secured Party, the Assignor will execute and deliver such further documents and do such further acts and things as Secured Party reasonably requests in order to effect the purposes of this Assignment Agreement.

8. No Waiver; Cumulative Remedies. Secured Party shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder and no waiver shall be valid unless in writing, signed by Secured Party, and then only to

the extent therein set forth. A waiver by Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Secured Party would otherwise have on any future occasion. No failure to exercise or any delay in exercising on the part of Secured Party any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law.

9. Severability of Provisions. The provisions of this Assignment Agreement are severable, and if any clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall attach only to such clause or provision or part thereof and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision in this Assignment Agreement in any jurisdiction.

10. Amendments; Choice of Law; Binding Effect.

(a) None of the terms or provisions of this Assignment Agreement may be altered, modified or amended except by an instrument in writing, duly executed by each of the parties hereto.

(b) This Assignment Agreement shall be governed by and be construed and interpreted in accordance with the law of the State of Ohio.

(c) This Assignment Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. Address of Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing, and if addressed to the Assignor, mailed or delivered to it, addressed to it at:

Compass Rail Corporation
555 California Street
Suite 2810
San Francisco, California 94104
Attention: President

and, if to Secured Party, mailed or delivered to it, addressed to it at:

The Provident Bank
One East Fourth Street
Cincinnati, Ohio 45202
Attention: Forest C. Frank
Vice President

with a copy to:

Keating, Muething & Klekamp
One East Fourth Street
Cincinnati, Ohio 45202
Attention: Richard D. Siegel, Esq.

or, as to each party, at such other address as shall be designated by such party in a written notice to the other complying as to delivery with the terms of this section. All notices, requests, demands and other communications provided for hereunder shall be effective when deposited in the mail, first class, postage prepaid or delivered to the telegraph company, charges prepaid, addressed as aforesaid.

12. Headings. The descriptive headings hereunder used are for convenience only and shall not be deemed to limit or otherwise effect the construction of any provision hereof.

13. Counterpart Execution. This Assignment Agreement may be executed in several counterparts each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have caused this Assignment Agreement to be duly executed and delivered by their respective officers thereunto duly authorized on the day and year first above written.

WITNESSES:

COMPASS RAIL CORPORATION
Assignor

BY: _____

ITS: _____

THE PROVIDENT BANK
Secured Party

BY: _____

ITS: _____

PR67506T.WP5/ASSIGNMENT AGREEMENT

Schedule 1.1(u)

RAILCAR SCHEDULE

<u>CAR NUMBERS</u>	<u>PER CAR CASUALTY VALUE</u>	<u>PER CAR STIPULATED LOSS VALUE</u>	<u>PER CAR INSURED</u> <i>Insurance</i> <u>INTEREST</u> <i>Amount</i>
GROUP A:			
CR487301 to CR487364	\$11,518.86	\$8,766.20	\$2,752.66
CR487366 to CR487407			
CR487409 to CR487453			
CR487455 to CR487471			
CR487473 to CR487583			
CR487585 to CR487608			
CR487610 to CR487634			
CR487636 to CR487643			
CR487645 to CR487672			
CR487674 to CR487731			
CR487733 to CR487757			
CR487759 to CR487824			
GROUP B:			
CR488166 to CR488168	\$11,518.86	\$8,765.72	\$2,753.14
CR488170 to CR488180			
CR488182 to CR488185			
CR488218			
CR488251 to CR488254			
CR488260			
CR488264 to CR488268			
CR488272 to CR488284			
CR488286 to CR488347			
CR488349 to CR488353			
CR488355 to CR488435			
CR488437 to CR488463			
CR490801 to CR490804			
CR490806 to CR490835			
CR490837 to CR490875			

CAR NUMBERS

PER CAR
CASUALTY VALUE

PER CAR
STIPULATED
LOSS VALUE

PER CAR
INSURED *Insurance*
INTEREST *Amount*

GROUP C:

CR488464 to CR488502
CR488504 to CR488517
CR488519 to CR488531
CR488533 to CR488554
CR488556 to CR488606
CR488608 to CR488655
CR488657 to CR488760
CR488762 to CR488853
CR488855 to CR488938
CR488940 to CR488941
CR488943 to CR488952
CR488954 to CR489020
CR489022
CR489024 to CR489193
CR489195 to CR489256
CR489258 to CR489332
CR489334 to CR489347
CR489349 to CR489423
CR489425 to CR489490
CR489492 to CR489541
CR489543 to CR489641

\$11,518.86

\$8,550.76

\$2,968.10

Schedule 1.1(y)

List of Leases

- (1) Lease of Railroad Equipment dated as of March 15, 1978 between Consolidated Rail Corporation and The Connecticut Bank and Trust Company, as Trustee under a Trust Agreement dated of even date with Sixth HFC Leasing Corporation.
- (2) Lease of Railroad Equipment dated as of March 15, 1978 between Consolidated Rail Corporation and The Connecticut Bank and Trust Company, as Trustee under a Trust Agreement dated of even date with Fifth HFC Leasing Corporation.
- (3) Lease of Railroad Equipment dated as of March 15, 1978 between Consolidated Rail Corporation and The Connecticut Bank and Trust Company, as Trustee under a Trust Agreement dated of even date with Fourth HFC Leasing Corporation.

Schedule 1.1 (a.e.)

LOAN ALLOCATION

SCHEDULE - 4TH HFC

<u>Date</u>	<u>Debt Service</u>	<u>Interest</u>	<u>Principal</u>	<u>Loan Balance</u>
03/31/92				\$5,961,880.00
07/02/92	\$665,000.01	\$144,741.20	\$520,258.81	\$5,441,621.19
01/02/93	\$665,000.01	\$258,477.01	\$406,523.00	\$5,035,098.18
07/02/93	\$665,000.01	\$239,167.16	\$425,832.85	\$4,609,265.34
01/02/94	\$4,828,205.44	\$218,940.10	4,609,265.34	\$0.00

(2)

LOAN ALLOCATION

SCHEDULE - 5TH HFC

<u>Date</u>	<u>Debt Service</u>	<u>Interest</u>	<u>Principal</u>	<u>Loan Balance</u>
03/31/92				\$3,365,140.00
07/02/92	\$375,293.53	\$81,698.12	\$293,595.41	\$3,071,544.59
01/02/93	\$375,293.53	\$145,898.37	\$229,395.16	\$2,,842,149.43
07/02/93	\$375,293.53	\$135,002.10	\$240,291.43	\$2,601,858.00
01/02/94	\$2,725,446.25	\$123,588.25	\$2,601,858.00	\$0.00

(3)

LOAN ALLOCATION
SCHEDULE - 6TH HFC

<u>Date</u>	<u>Debt Service</u>	<u>Interest</u>	<u>Principal</u>	<u>Loan Balance</u>
03/31/92				\$13,272,980.00
07/02/92	\$1,480,255.09	\$322,238.46	\$1,158,016.63	\$12,114,963.37
01/02/93	\$1,480,255.09	\$575,460.76	\$904,794.33	\$11,210,169.04
07/02/93	\$1,480,255.09	\$532,483.03	\$947,772.06	\$10,262,396.98
01/02/94	\$10,749,860.84	\$487,463.86	\$10,262,396.98	\$0.00

SCHEDULE 1.1(c)
TO
LOAN AND SECURITY AGREEMENT

Equipment

CR487361 to CR487364
CR487366 to CR487407
CR487409 to CR487452
CR487455 to CR487471
CR487473 to CR487500
CR487510 to CR487534
CR487536 to CR487543
CR487545 to CR487572
CR487574 to CR487731
CR487733 to CR487757
CR487759 to CR487824

* * * *

CR488155 to CR488168
CR488170 to CR488180
CR488182 to CR488185
CR488218
CR488251 to CR488254
CR488260
CR488264 to CR488269
CR488272 to CR488284
CR488286 to CR488347
CR488349 to CR488353
CR488355 to CR488435
CR488437 to CR488463
CR490801 to CR490804
CR490806 to CR490835
CR490837 to CR490875

* * * *

CR488464 to CR488501
CR488504 to CR488517
CR488519 to CR488531
CR488533 to CR488554
CR488556 to CR488606
CR488608 to CR488655
CR488657 to CR488750
CR488752 to CR488853
CR488855 to CR488933
CR488940 to CR488941
CR488943 to CR488953
CR488954 to CR488960
CR489022
CR489024 to CR489193
CR489195 to CR489256
CR489258 to CR489332
CR489334 to CR489347
CR489349 to CR489423
CR489425 to CR489490
CR489492 to CR489541
CR489543 to CR489544

SCHEDULE 4.1(t)
TO
LOAN AND SECURITY AGREEMENT
Material Agreements

NONE

SCHEDULE 4.2(a)
TO
LOAN AND SECURITY AGREEMENT

Consent or Approval

Defined terms used herein shall have the meaning ascribed to them in the Purchase and Sale Agreement.

1. Consents or approvals required pursuant to the Lease Documents.
2. Consents or approvals required pursuant to the Purchase Agreements.
3. Consents or approvals required pursuant to the Trust Agreements.
4. Consents or approvals required pursuant to the Option Agreements.

SCHEDULE 4.2 (C)
TO
LOAN AND SECURITY AGREEMENT

Undisclosed Liabilities

NONE

SCHEDULE 4.2 (c)
TO
LOAN AND SECURITY AGREEMENT
Statutes, Laws and Regulations

NONE

Exhibit 6.2(n)
to
Loan and Security Agreement

REMARKETING SERVICES AGREEMENT

This REMARKETING SERVICES AGREEMENT (this "Agreement"), dated _____, between COMPASS CAPITAL CORPORATION, a California corporation ("Compass") and THE PROVIDENT BANK, an Ohio banking corporation ("Provident").

WITNESSETH:

A. Provident has indicated its intention to pursue its remedies under a Loan and Security Agreement dated March 31, 1992 (the "Loan Agreement").

B. As a result thereof, Provident may become the legal or beneficial owner of _____ 100-ton open top triple hopper railcars (the "Equipment") or the interest of Compass Rail Corporation under _____ Trust Agreements dated as of March 15, 1978 ("Trust Agreement") in respect of the Equipment.

C. The execution and delivery of this Agreement is a condition precedent to the exercise by Provident of such remedies.

D. Provident desires to retain Compass to provide, and Compass is willing to provide, remarketing services described herein with respect to the Equipment.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Remarketing.

(a) Remarketing Services. From the date hereof until terminated in accordance with Section 1(f) hereof (the "Exclusive Remarketing Period"), Compass shall, except as otherwise provided herein, serve as the exclusive agent for the remarketing of any Equipment legally or beneficially owned by Provident (the "Provident Equipment"). Upon termination of the Exclusive Remarketing Period pursuant to Section 1(f) hereof (the "Nonexclusive Remarketing Period"), Compass shall serve as the nonexclusive agent for the remarketing of the Provident Equipment. The services provided by Compass pursuant to this Agreement as described in this Agreement are referred to herein as the "Remarketing Services." The Remarketing Services to be performed during the Exclusive Remarketing Period shall consist of all

services reasonably necessary to sell or lease the Provident Equipment to a willing buyer or lessee for the best price available and shall include without limitation the following specific services: (i) advice regarding appropriate storage facilities, storage programs, transitional maintenance programs, routine maintenance and service, transporting and other services related to the storage and use, storage maintenance, protection and similar concerns with regard to the Provident Equipment prior to its sale or re-lease, (ii) remarketing of the Provident Equipment in accordance with Compass' customary business practices, including personal solicitation and discussions with prospective buyers, advertising in publications normally used to advertise equipment of a similar type, direct mail, (iii) advice regarding insurance coverage, (iv) advice regarding proposed terms of any sale or re-lease, and (v) the negotiation of agreements relating to any sale or re-lease of the Provident Equipment. During the Nonexclusive Remarketing Period, Compass shall perform the foregoing services only to the extent Provident deems appropriate after consultation with Compass.

(b) Priority. In providing services hereunder, Compass will use the same degree of care as it would use in providing such services in respect of equipment owned by Compass; provided, however, that Provident acknowledges that Compass is in the business of marketing, remarketing, purchasing and leasing equipment, including equipment which may be identical, or similar, to the Provident Equipment in configuration, specifications or utility, and it is understood by Provident that Compass will not be obligated to give priority to the sale, re-lease or other disposition of the Provident Equipment in preference to the sale, lease or other disposition of new or used equipment owned or remarketed by Compass; and Compass agrees that it will not discriminate against the Provident Equipment or give other equipment owned or remarketed by Compass preference or priority in the sale, disposition or remarketing of the Provident Equipment.

(c) Control of Remarketing. Compass hereby acknowledges that all decisions as to whether the Provident Equipment should be sold, leased or otherwise disposed of, the terms of any such sale, lease or disposition and all related decisions during the Remarketing Period shall, except as set forth in the next sentence hereof, remain within the sole discretion of Provident, and Compass agrees that it shall have no authority whatsoever to bind Provident to any obligation and shall not represent itself, or hold itself out, as having such authority. This Section 1(c) notwithstanding Provident shall approve and consummate each and any bona fide proposed sale to an unrelated third party at arm's-length of all or a portion of the Provident Equipment, if the Proceeds (as hereinafter defined) from the sale of such Provident Equipment equals or exceeds the

Total Cost of such Provident Equipment. For purposes of this Section, (i) Proceeds means the proceeds realized from such sale, rental, lease or other disposition after deduction of all reasonable and necessary expenses incurred by Compass and Provident in connection with or related to the ownership, sale, lease or other disposition of the Provident Equipment including without limitation any agency fees or commissions due to any third party for services performed relating to the remarketing of the Provident Equipment and all of Provident's incurred (but not previously deducted in computing Proceeds) costs and expenses of owning or acquiring and perfecting title to the Provident Equipment, including but not limited to insurance premiums, personal property taxes, maintenance and storage expenses; (ii) Total Cost means Provident's original acquisition cost of the Provident Equipment to be sold compounded semiannually from the date of acquisition to the date of closing of such proposed sale at the rate of 9.5% per annum; and (iii) a proposed sale of Provident Equipment to a third party shall not be considered either bona fide or at arm's-length if the terms of such sale provide for any stated or unstated future participation in the cash flow from, or proceeds of, the Provident Equipment by Compass whether through equity participation, option, profit sharing, residual sharing, joint venture, management, remarketing or otherwise. During the Nonexclusive Remarketing Period, Provident will not sell or lease the Provident Equipment or any portion thereof if the terms of such sale provide for any stated or unstated future participation in the cash flow from, or proceeds of, the Provident Equipment by Provident whether through equity participation, option, profit sharing, residual sharing, joint venture, management, remarketing or otherwise unless Provident shall have provided for the participation by Compass in such future participation as if such future participation had been received by Provident during the Nonexclusive Remarketing Period.

(d) Reports. Compass agrees to consult with Provident and to keep Provident informed of the status of the Remarketing Services and to furnish Provident with copies of any written offer or other communications with respect to the Provident Equipment promptly after receipt thereof. Upon the written request of Provident, Compass shall notify Provident of the status of the Remarketing Services and shall specifically describe in such notification (i) the identity of any party which has made or, in the reasonable opinion of Compass, could be expected to make an offer to purchase or lease the Provident Equipment and (ii) the terms of any actual or, to the extent known by Compass, potential offer.

(e) Insurance. At Provident's expense (but subject to recovery under the terms hereof), Compass shall procure property and liability insurance coverage (to the extent not otherwise

provided by any lessee of the Provident Equipment) on the Provident Equipment at market rates having limits which are customary in the industry and otherwise acceptable to Provident. Such insurance coverage shall be effective as of the date the Provident Equipment is no longer subject to such coverage provided by any such lessee.

(f) Termination. Unless extended pursuant to this Section 1(f), the Exclusive Remarketing Period shall expire on July 2, 1994. Unless extended pursuant to this Section 1(f), the Nonexclusive Remarketing Period shall expire on January 2, 1995. Upon the request of Compass, Provident shall extend the Exclusive or the Nonexclusive Remarketing Periods for a reasonable time to permit Compass and Provident to close a disposition of Provident Equipment to an identified, qualified third party offeror. Provident's determination as to whether a third party meets the foregoing standard and the length of such extension shall be controlling.

Section 2. Payment for Remarketing Services.

The payment of any costs, expenses and fees relating to the Remarketing Services shall be made as follows:

(a) Compass Fee. Except as hereinafter provided, Compass shall receive a fee from any sale, rental, lease or other disposition (including a loss of the Provident Equipment for which insurance proceeds calculated on the basis of a total loss are payable) of the Provident Equipment by Provident (i) to Consolidated Rail Corporation pursuant to an Equipment Option Agreement provided no Event of Default shall have occurred and be continuing under any lease of the Provident Equipment to Consolidated Rail Corporation in an amount equal to one hundred percent (100%) of the Net Proceeds (as hereinafter defined) received in respect of the Provident Equipment in connection with such sale; (ii) otherwise during the Exclusive Remarketing Period in an amount equal to fifty percent (50%) of the Net Proceeds received in respect of the Provident Equipment in connection with any such sale, rental, lease or other disposition and (iii) during the Nonexclusive Remarketing Period, in an amount equal to fifty percent (50%) of the Net Proceeds received in respect of the Provident Equipment in connection with any such sale, rental, lease or other disposition less the amount of any fee or commission which Provident has agreed, in its sole discretion, to pay, or has paid, to any other remarketing agent (which is not an affiliate of Provident) in connection with any sale which has not been previously deducted under this clause. In each case, such amount shall be due and payable promptly upon, but in no event later than three (3) business days after, receipt by Provident of the Net

Proceeds in United States Dollars and in immediately available funds. The term "Net Proceeds" as used herein shall mean Proceeds in excess of Provident's Computed Cost (as hereinafter defined) for the Provident Equipment. The term "Computed Cost" as used herein shall mean the amount equal at any date of calculation to the original acquisition cost to Provident of the Provident Equipment less all Proceeds received by Provident prior to the date of calculation compounded semi-annually (on each January 1 and July 1) from the date of acquisition or the date of receipt, as the case may be, to the date of calculation at the rate of 9.5% per annum.

(b) Payment of Expenses. Compass shall be responsible for all its costs and expenses incurred by Compass in providing the Remarketing Services hereunder as they relate to such proposed purchase or lease, as the case may be, and shall be reimbursed therefor from the gross proceeds of any sale of the Provident Equipment.

Section 3. Standard of Care; Warranty Disclaimer.

In providing services hereunder, Compass will use the same degree of care as it would ordinarily use in providing such services in respect of equipment owned or remarketed by Compass. PROVIDENT UNDERSTANDS AND AGREES THAT THE SERVICES TO BE PROVIDED BY COMPASS HEREUNDER WILL BE IN THE NATURE OF ESTIMATES, PROJECTIONS AND BEST-EFFORTS JUDGMENTS AND THAT THE SAME ARE NOT IN ANY WAY GUARANTEED OR WARRANTED BY COMPASS EXCEPT TO THE EXTENT OF THE STANDARD OF CARE TO BE APPLIED IN PROVIDING SUCH SERVICES PURSUANT TO THIS SECTION 3. OTHER THAN AS SET FORTH IN THIS SECTION 3 AND SECTION 4 HEREOF, NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO CONSTITUTE A REPRESENTATION, WARRANTY, STANDARD OF CARE OR OTHER OCCURRENCE WITH RESPECT TO ANY SERVICE PROVIDED HEREUNDER.

Section 4. Indemnification.

(a) Indemnification by Compass. Compass shall indemnify and hold harmless Provident, its directors, officers and agents against any and all liabilities, claims, demands, suits, damages and losses in any manner arising out of or in any way connected with the Remarketing Services provided by Compass with respect to the Provident Equipment, whether authorized hereunder or by Provident, arising out of the negligence or misconduct of Compass. Compass will, at the request of Provident, negotiate any claim or defend any action or suit brought against Provident, provided, such negotiation or defense shall be conducted at the sole direction of Compass.

(b) Indemnification by Provident. Provident shall indemnify and hold harmless Compass, its directors, officers and agents against any and all liabilities, claims, demands, suits, damages and losses in any manner arising out of or in any way connected with the legal or beneficial ownership by Provident of the Provident Equipment arising and accruing after the date of acquisition of the such ownership by Provident other than those relating to the Remarketing Services provided by Compass with respect to the Provident Equipment, whether authorized hereunder or by Provident arising out of the negligence or misconduct of Compass. Provident will, at the request of Compass negotiate any claim or defend any action or suit brought against Compass, provided, such negotiation or defense shall be conducted at the sole direction of Provident.

Section 5. Bankruptcy.

Provident may terminate this Agreement if Compass becomes insolvent; is not paying its bills when due without just cause; if a receiver for its assets is appointed; if it takes any step leading to its cessation as a going concern; or if it ceases operations. If bankruptcy, insolvency or winding up proceedings ("Insolvency Proceedings") are commenced with respect to Compass, Provident may terminate this Agreement unless the receiver, liquidator, trustee or debtor in possession assumes this Agreement within thirty (30) days pursuant to the applicable law.

Section 6. Compass' Representations and Warranties.

Compass represents and warrants that:

(a) Compass is a corporation duly organized and validly existing in good standing under the laws of the State of California and has the corporate power and authority to enter into and perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement by Compass have been duly authorized by all necessary corporate action on the part of Compass and compliance by Compass with the terms and provisions hereof do not and will not result in the violation of the charter documents or by-laws of Compass, and do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien upon any property or assets of Compass under any indenture, mortgage or other agreement or instrument to which it is a party or by which it or any of its

property is bound, or any existing applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court having jurisdiction over it.

(c) neither the execution and delivery by Compass of this Agreement nor the consummation of any of the transactions by Compass contemplated hereby requires the consent or approval of the giving of notice to, the registration with, or the taking of any other action in respect of, any Federal governmental authority or agency or any governmental authority or agency of the jurisdiction of incorporation or of the principal place of business of Compass;

(d) this Agreement has been duly executed and delivered by Compass and constitutes the legal, valid and binding obligation of Compass enforceable against Compass in accordance with the terms hereof;

(e) there are no pending or, to the best knowledge of Compass, threatened actions or proceedings against Compass before any court or administrative agency which might materially adversely affect the ability of Compass to perform its obligations under this Agreement; and

(f) no Federal or California law or governmental rule or regulation makes this Agreement invalid or not binding on Compass by reason of Compass' participation in the transactions contemplated hereby.

Section 7. Successors and Assigns.

This Agreement shall be binding on, and inure to the benefit of, the respective successors and assigns of each of the parties hereto. Compass shall not, without the prior written consent of Provident, which consent may be granted or withheld in Provident's sole discretion, assign this Agreement or merge, consolidate or sell all or substantially all of its assets, except pursuant to any merger, consolidation or other reorganization of Compass involving an affiliate and/or subsidiary of Compass.

Section 8. Notices.

All notices and requests in connection with this Agreement shall be given in writing and may be personally delivered or given by airmail, telecopy, telex or any other customary means of communication addressed as follows (or to any other address for either party which such party may designate to the other party):

- (a) The Provident Bank
One East 4th Street
Cincinnati, Ohio 45202
Attention: Forest C. Frank,
Vice President
Teletype No.: (513) 579-2556
Confirm No.: (513) 579-3562
- (b) Compass Capital Corporation
555 California Street
Suite 2810
San Francisco, California 94104
Attention: President
Teletype No.: (415) 392-9142
Confirm No.: (415) 392-4900

Section 9. Miscellaneous.

(a) Headings. Headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

(b) Partial Invalidation. If any provision of this Agreement is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

(c) Governing Law. This Agreement shall in all respects, including all matters of construction, validity and performance, be governed by, and construed and enforced in accordance with, the laws of the State of Ohio.

(d) Amendments. No provision of this Agreement may be amended, changed, waived or discharged orally, but only by an instrument in writing specifying the provision intended to be amended, changed, waived or discharged and signed by the party against whom enforcement of such amendment, change, waiver or discharge is sought.

(e) Confidentiality. Each party hereto agrees that it will treat the economic terms of this Agreement and the terms hereof and thereof as confidential and will protect the confidentiality thereof in accordance with the normal policies of such party with respect to confidential information. In connection with any disclosure the party making such disclosure shall make reasonable efforts to obtain confidential treatment of such information.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

(g) Entire Agreement. This Agreement constitutes, on and as of the date hereof, the entire agreement of the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between the parties hereto with respect to the subject matter hereof are hereby superseded in their entireties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

COMPASS CAPITAL CORPORATION

By: _____
Name: _____
Title _____

THE PROVIDENT BANK

By: _____
Name: _____
Title _____